APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-6997

SANDRA LOCKETT,

Petitioner

—vs.—

THE STATE OF OHIO,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

PETITION FOR CERTIORARI FILED JUNE 27, 1977
CERTIORARI GRANTED OCTOBER 11, 1977

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INDEX TO APPENDIX

RELEVANT DOCKET ENTRIES

MO.	DAY	YEAR	
Jan.	21	75	INDICTMENT FILED.
Jan.	29	75	ON Jan. 27, 1975 defts. plead Not Guilty. Appearing in indigent circumstances Court appoints Attorneys Max W. Johnstone and Edward A. Bayer as counsel. $100,000.00 cash bond. Remanded to County Jail to await pretrial hearing set for Feb. 3, 1975.
Feb.	4	75	This day it is hereby ordered that trial in this case be set for 4/1/75.
Apr.	4	75	Deft found Guilty of Agg. Murder Count #1. Guilty of Specifications 1 & 2., Guilty of Agg. Robbery Ct. #2.
Apr.	9	75	Motion for new trial. (Johnstone and Bayer).
Apr.	9	75	On 4/4/75 Ordered that Dr. Daniel Reinhold select 2 doctors (psychologists) to examine def.
Apr.	9	75	This day, Mrs. Rosslune Wells, Director of the Akron Drug Abuse Clinic ordered to transmit to counsel a report including any physical and psychological examinations carried on by or for the Akron Drug Abuse Clinic and any other information concerning def. Order effective upon presentation of it to Mrs. Wells by mail or personally.
Apr.	11	75	On 4/10/75, Ordered that Dr. Abdon Villalba be appt. to examine the def.
May	2	75	5/2/75 Deft. in Crt. w/atty for hrg. on Motion for Nerw Trial. OVERRULED. No mitigating circumstances present. CCJ then to SOCF, DEATH BY ELECTROCUTION for AGG. MUR-

MO.	DAY	YEAR	
			DER 2903.01 (B), min. 7 max. 25 yrs for AGG. ROB. 2911.01 (A) (1) and/or 2), pay costs, Deft. inf. of right of appeal. Attys MAX. W. JOHNSTONE & EDWARD A. BAYER be appt. for purp. of appeal. Sent. imp. in each of 2 counts to run CONCURRENTLY w/each other.
May	14	75	Notice of Appeal.
June	18	75	Entry suspending execution of sentence pending appeal.
July	30	75	Motion for leave of crt to file Motion for new trial based on trial tpt/ (Kravitz).
July	30	75	Motion for new trial. (Kravitz).
Aug.	4	75	On 7/31/75, Hearing on def motion cont 8/25/75, crt appts Max Kravitz and Gerald Simmons attys.
Sept.	2	75	ORDERED that the execution of the Death Penalty sentence rendered May 2, 1975 be suspended during the pendency of her appeal. W.H.
Sept.	15	75	Motion stayed pending Appeals crt. direction.
Oct.	2	75	APPELLANT'S Motion for Limited Remand OVERRULED. W.H.V. E.J.M. M.T.B.
Mar.	15	76	JUDGEMENT AFFIRMED. SPECIAL MANDATE ISSUED TO COMMON PLEAS COURT. COSTS to APPELLANT. EXCEPTIONS. WHV.
Jan.	31	77	OHIO SUPREME COURT ENTRY NO. 76-424. ORDERED that EXECUTION OF SENTENCE STAYED PENDING the timely filing of an AP-

MO. DAY YEAR

PEAL TO THE SUPREME COURT OF THE UNITED STATES.

FURTHER ORDERED that if a timely NOTICE OF APPEAL is FILED TO THE SUPREME COURT OF THE UNITED STATES, THIS STAY WILL AUTOMATICALLY CONTINUE PENDING FINAL DETERMINATION OF THE APPEAL BY THAT COURT

FURTHER ORDERED that the Clerk of this court shall forthwith send a certified copy of this STAY OF EXECUTION TO THE SUPERINTENDENT OF THE SOUTHERN OHIO CORRECTIONAL FACILITY, who shall acknowledge receipt thereof.

C. WILLIAM O'NEIL

Rehearing Denied.

INDICTMENT

CASE NO. CF. 75 1 06 (secret)

INDICTMENT FOR: Aggravated Muder (1)
Aggravated Robbery (1)

REVISED CODE SECTION: 2903.01 (B)
2911.01 (A) (1)/(2)

In the Common Pleas Court of Summit County, Ohio, of the term of JANUARY in the year of our Lord, One Thousand Nine Hundred and SEVENTY-FIVE

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, being duly impanelled and sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their oaths, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO,

DO FIND AND PRESENT, That SANDRA M. LOCKETT AKA SANDRA YOUNG aka SANDRA JONES aka SANDRA MEJAL on or about the 15th day of January, 1975, at the County of Summit, aforesaid, did commit the crime of AGGRAVATED MURDER in that she, did purposely cause the death of Sidney Cohen, while said Defendant was committing, or attempting to commit or fleeing immediately after committing, or attempting to commit aggravated robbery (2911.01), said death being contrary to Ohio Revised Code Section 2903.01 (B), and further said cause of death being done under aggravating circumstances, to-wit:

Specification (1) to Count (1) 2929.04 (A) 3

The Grand Jurors further find and specify that said offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by said Defendant, to-wit: Aggravated Robbery, 2911.01.

Specification (2) to Count (1) 2929.04 (A) 7

The Grand Jurors further find and specify that the offense presented above, the killing of Sidney Cohen, was committed while the said Defendant was committing, attempting to commit, or fleeing immediately after committing or attempting to commit aggravated robbery, 2911.01.

COUNT TWO

And the Grand Jurors of the State of Ohio, within and for the body of the County of Summit aforesaid, on their oaths in the name and by the authority of the State of Ohio, DO FURTHER FIND AND PRESENT, that SANDRA M. LOCKETT aka SANDRA YOUNG, aka SANDRA JONES aka SANDRA MEJAL, in the County of Summit and State of Ohio, on or about the 15th day of January A.D., 1975, in the County of Summit aforesaid did commit Aggravated Robbery, to-wit: that said SANDRA M. LOCKETT aka SNADRA YOUNG aka SANDRA JONES aka SANDRA MEJAL, while she was attempting to commit or was committing a theft offense as defined in 2913.01 of the Ohio Revised Code, to-wit: said Defendant, SANDRA M. LOCKETT aka SANDRA YOUNG, aka SANDRA JONES aka SANDRA MEJAL, did take and deprive Sidney Cohen of certain property, to-wit: one (1) Smith and Wesson Pistol, Serial Number D-683568, Blue Steel, or while fleeing immediately after such attempt or offense did inflict serious physical harm to another, ie., she did kill Sidney Cohen in the City of Akron, County of Summit and State of Ohio, with a deadly weapon which was on or about her person or under her control, to-wit: A Pistol, said offense of Aggravated Robbery in violation of Section 2911.01 (A) (1) and/or (2) of the Ohio Revised Code, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

S/JOHN H. SHOEMAKER
Assistant Prosecuting Attorney
Summit County, Ohio

For: STEPHAN M. GABALAC
Prosecuting Attorney
Summit County, Ohio

A TRUE BILL

S/V. BECK BODAGER
Foreman of the Grand Jury

EXCERPTS FROM PROCEEDINGS IN THE TRIAL COURT

[Mr. Rudgers (Prosecutor)]: Now, another function a Judge has is to give you the law that is applicable to this case. It's very, very important because if he instructs you on the law at the conclusion of this case, you will take those instructions and it will be your duty, a duty that you will promise to follow with the oath you take as a Juror, to accept the law as he instructs you on it, and to follow that law when you consider the facts. So it's very important that when the Judge instructs you on the Law you understand it and that you follow it, because that's the way the jury system in this country and in this State has existed since the beginning. We follow the law. It's our duty as Jurors, Attorneys, and Judges, to follow whatever the law is. Does everyone understand that? Okay.

Another function of the Judge in any criminal case is to decide punishment. Now, the Judge will instruct you on that point, those of you who do become Jurors, do not consider punishment in this case. Punishment is the sole prerogative of the Judge. The Jury's function is to decide facts and to apply the law as the Judge gives it to you to those facts to decide whether or not the Defendant is guilty or not guilty. Is that understood? O.K.

***

MR. RUDGERS: There were four people that were charged with the crimes of aggravated murder and aggravated robbery on Sidney Cohen on January 15, 1975. Those people were Nathan Earl Dew, James Lockett, the defendant seated here, and Al Parker.

Now are any of you familiar with any of those names or know any of those people? O.K.

Are any of you familiar by way of radio, television, newspapers or the like, with the facts of this case or the facts as they have been represented in the news media? Have any of you read or heard anything about this case from the newspaper or radio, this case in particular, State of Ohio versus Sandra Lockett?

You have heard about the State of Ohio versus Sandra Lockett?

MRS. HIGHLEY: Yes, I read it in the paper; then on the police radio I heard it happened, too. I got the police call.

MR. RUDGERS: Now, based on what you have read, would you be able to put that aside in this case, consider the evidence as it would come from the witness stand and as it would be introduced through physical exhibits, listen to the Judge as he instructs you on the law, and decide the guilt or innocence based on those two factors?

MRS. HIGHLEY: I don't know. After hearing all that and reading it, it's pretty hard.

MR. RUDGERS: Naturally, you know we can't say that reading something we can never forget it it.

MRS. HIGHLEY: No.

MR. RUDGERS: But the concern here and the concern of all of us is not that you forget that, but that you are able to set it aside, so to speak, and consider the facts, the evidence, the law in this case as it relates to the guilt or innocence of this defendant.

MRS. HIGHLEY: Oh, I don't know.

MR. RUDGERS: Do you think you could do that?

MRS. HIGHLEY: It's pretty hard.

MR. RUDGERS: If the Judge were to so instruct you—

MRS. HIGHLEY: If he instructs, yes.

MR. RUDGERS: If he told you that this was your duty?

MRS. HIGHLEY: Yes, I think I could then.

MR. RUDGERS: Alright. Because thats basically what all of these questions are geared to. Can you, will you be able to fulfill your duties as a juror in applying the law as the Judge gives it to you and in listening to the facts and divorcing those things that are not part of this case as you hear it in this Court room?

Now, has anyone read or heard through the news media about any of the cases involving the robbery and the death of Sidney Cohen, could you raise your hand? I'm going to ask all of you that had your hands up, the same question I asked Mrs. Highley, is it?

MRS. HIGHLEY: Yes.

MR. RUDGERS: That is, would you be able to divorce

the reading, the listening of reports of the case regardless of what they concerned in the cases, will you be able to divorce that from your ability to fairly and impartially listen to the evidence as it comes from the witnesses, the exhibits and the stipulations, agreements between the Attorneys as to certain facts, will you be able to divorce the news media coverage that you have heard or read from your ability to fairly and impartially try the case? I see you nodding and I assume since noone has objected, that you all can do that. If you don't feel you could, let me know.

Again, this is really a group participation, I hope whenever you have questions whenever you can't understand anything, don't hesitate to raise your hand and ask me.

I mentioned stipulations, just a brief word about that. Stipulations are agreements between both sides in a case as to certain things, and I believe you will find that during the course of this trial certain of the facts, certain of the issues will be stipulated. That is, the State and the Defendant will both agree to certain things and those things will not be in controversy and you will be presented those things and the Judge will instruct you on those facts. Those are also evidence and should be considered as evidence.

Okay. I spent a little bit of time talking to you about the duties and functions of the lawyers and the Judge in this case, Judge Barbuto, and you as jurors, prospective jurors, and we come now to an area that I touched on before. That is punishment.

Punishment, as I mentioned and as the Judge will instruct you, is solely up to Judge Barbuto in this case and in all of the cases involving the robbery and death of Sydney Cohen, it's Judge Barbuto's function. It's his duty to decide what punishment each and every defendant should receive. Now the reason I bring this up is, even though that is the Judge's function, this is a capital case and does everyone know what I mean by capital case, capital punishment case? That means that there is a possibility that the defendant in this case, in the other cases that involved the robbery and death of Sidney Cohen, that the defendants might face the electric chair. O.K. Because

there is a possibility, and I want to emphasize that, it's only a possibility because Judge Barbuto will make the final decision as to punishment, but because there is a possibility of capital punishment we must ask this question and that is, does anyone here have an abiding conviction that is so strong against capital punishment that they could not sit, listen to the evidence, listen to the law, make their determination solely upon the evidence and the law without considering the fact that capital punishment is only a possibility in this case?

What is your name, so we can come back?

MR. SMITH: Jerry Smith.

MR. RUDGERS: Who else?

MRS. TOMASELLI: Betty Tomaselli.

MRS. YAKUBIK: Elizabeth Yakubik.

MRS. LEE: Minnie Lee.

MR. RUDGERS: Anyone else? Realizing that there is a possibility and that's where the specifications come into play in the indictment, anyone else that realizing there's a possibility have any qualms whatsoever about fairly and impartially deciding this case on the evidence as you hear it and the law as the Judge instructs you?

MRS. TIELL: I have a question about it. Do you have to feel that in case the Judge ruled—I mean, if she was found guilty that I put her in the electric chair just because I said that—I mean, that's up to the Judge?

MR. RUDGERS: Right. It is up to the Judge and it's his determination as to what punishment will be meted out in this case, if punishment be resolved or in any other case involving the death of Sidney Cohen.

Is there anyone, knowing their verdict might possibly result in that, couldn't listen to the evidence, be fair and impartial based on the evidence and the law and disregard that consideration? Could you do that? Have I answered your question?

MRS. TIELL: You answered my question. I mean, I really don't know, but I would—

MR. RUDGERS: Let me ask you this then. If the Judge were to instruct you that you must follow the law, it's your duty as a juror to follow the law, listen to the evidence and

reach your verdict based on those two things, could you do that?

MRS. TIELL: I think I could.

MR. RUDGERS: Would you do that?

MRS. TIELL: Yes, if I was instructed.

MR. RUDGERS: If you were selected as a juror and you took your oath to well and truely try and true deliverance make between the State of Ohio and Sandra Lockett, you could do that based on the evidence and the law in this case?

MRS. TIELL: (Nods head)

MR. RUDGERS: Not on the fact that possibly the death penalty would be imposed or not imposed?

MRS. TIELL: Well, I think I could. I don't know.

MR. RUDGERS: Would you follow the law?

MRS. TIELL: Yes.

MR. JOHNSTONE: What's her name?

MRS. TIELL: Dorothy Tiell.

COURT: Let me pursue this since the doors been open, and I'm addressing myself to Jerry Smith, Minnie Lee, Betty Tomaselli, Barbara Barton, Dorothy Tiell, and Elizabeth—

MRS. BARTON: My name is Barbara Barton. I didn't say anything about capital punishment.

COURT: Alright. Dorothy Tiell. Those of you who have expressed a strong feeling in regard to capital punishment, the Court would like to ask you this. Those of you who have responded, do you feel that you could take an oath to well and truely try this case because you have to take an oath if you were selected as jurors in this particular case, could you take an oath and follow the law, or is your conviction so strong that you cannot take an oath, knowing that a possibility exists in regard to capital punishment? Now, I will ask each and every one of you that. Jerry Smith, could you take the oath?

MR. SMITH: No.

COURT: You could not take an oath in this particular case because of your religious conviction?

MR. SMITH: (Nods head).

COURT: Your conviction?

MR. SMITH: I just don't believe in capital punishment.

COURT: Therefore you could not and would not take an oath, is that what you are telling the Court?

MR. SMITH: Right.

COURT: Minnie Lee?

MRS. LEE: Yes.

COURT: Could you take an oath in this case because of your convictions in relation to capital punishment?

MRS. LEE: I wouldn't like to because I don't believe in capital punishment.

COURT: Well my question is, would you and could you take an oath and would you follow your oath?

MRS. LEE: If I took it, I'd follow it but I wouldn't want to take it, not with capital punishment.

COURT: I still have to ask you directly, Minnie, would you take the oath, now that you know the situation?

MRS. LEE: No.

COURT: You would not take the oath?

MRS. LEE: No.

COURT: Alright. Betty Tomaselli?

MRS. TOMASELLI: I would not.

COURT: You would not take the oath?

MRS. TOMASELLI: No, I would not.

COURT: Dorothy Tiell, would take the oath?

MRS. TIELL: Yes, I would take it.

COURT: Alright. Elizabeth Yakubik.

MRS. YAKUBIK: No, I would not.

COURT: You would not take the oath?

MRS. YAKUBIK: No.

COURT: Mr. Bayer, would you like to ask any questions? Have I covered every individual that has expressed themselves in relation to capital punishment, who are opposed to capital punishment? I have addressed myself to each and everyone of you? Mr. Bayer, would you make further inquiry of these prospective jurors?

MR. BAYER: No, I don't think so, your Honor. You mean the five that would not or could not take the oath?

COURT: Yes.

MR. BAYER: No, I have no questions.

MR. RUDGERS: He has no objections to excusing them?

MR. BAYER: I have no objections.

MR. RUDGERS: State would move to excuse those jurors who just were examined and who have said they would not take the oath.

COURT: Yes. The Court will excuse Jerry Smith, Minnie Lee, Betty Tomaselli, Elizabeth Yakubik. The reason why you are being excused, you must take an oath or affirm in a criminal case, in a case to well and truely try the case. Let me ask you this. I didn't use the word affirm. Would any of you affirm to well and truely try this case? Jerry?

MR. SMITH: No.

COURT: You would not?

MR. SMITH: (Shakes head).

COURT: Minnie?

MRS. LEE: No.

COURT: She would not. Betty Tomaselli?

MRS. TOMASELLI: No.

COURT: She would not. Elizabeth?

MRS. YAKUBIK: No.

COURT: She would not.

MR. RUDGERS: The State would renew it's motion.

COURT: Alright. Thank you. I want to thank each and every one of you for being very honest with the Court and with the parties to this action because you must take an oath or affirm, either one. Since you feel that you cannot and will not, and I am expressing myself, that you feel you will not take the oath knowing the possibility here the Court will excuse you for cause. Would you kindly report back to the Jury Commissioner, please? She will excuse you from there. There's some formalities you have to comply with. Thank you very much.

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MR. JOHNSTONE [Defense Counsel]: At this time, Your Honor, I wish to take exception to the Court's dismissal of prospective jurors Minnie Lee, Jerry Smith, Betty Tomaselli, and Elizabeth Yakubik. I understand that they were dismissed, before I arrived, on the grounds that they would not sign a verdict subjecting anyone to capital punishment.

COURT: No. That's not it. They were excused because

they would not take the oath or even affirm if a question of capital punishment was even considered by anyone. I specifically asked those questions. They would not take the oath.

MR. JOHNSTONE: I stand corrected. I said this was in my absence, before I arrived.

COURT: Yes. Those four would not take the oath or affirm to well and truly try the case.

MR. JOHNSTONE: Is Dorothy Tiell still among us?

COURT: She's still here. She would take the oath. Okay. Let's go.

***

MR. RUDGERS: Basically, all these questions come down to will you do your duty as a juror, which is to listen to the evidence, base your decision on the evidence and the law?

Another point of law that will be covered by the Judge is the issue of punishment or penalty. Penalty is in the sole discretion of Judge Barbuto. It's in his discretion in every criminal case. He decides penalty. He decides what should happen if in fact the defendant is convicted. He will decide what happens to each and every one of the defendants that's convicted in this case. Judge Barbuto will decide that. The jurors' function is to listen to the evidence, listen to the law as the Judge gives it, decide the guilt or innocence. In spite of that fact, because this case carries with it the possibility of death in the electric chair, and I emphasize possibility. Why? Because Judge Barbuto decides penalty. We don't decide penalty. The Jury doesn't decide penalty.

The possibility of capital punishment in this case, death in the electric chair possible if the defendant is found guilty of aggravated murder, one of the specifications, and aggravated robbery. Okay? Is there anyone here that has any feelings about capital punishment that would not allow them to listen to the evidence in this case, base their verdict on the evidence and the law as the Judge gives it to you? Is there anyone here that is so opposed to capital punishment that just because there's a possibility of capi-

tal punishment they couldn't be fair and impartial to the State of Ohio?

Okay. I take it by your silence that you all agree then that you could follow the evidence, the rules of law even though there's a possibility of the death penalty? Agreed?

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MR. JOHNSTONE: Thank you. Now, this is the fourth trial in connection with this particular homicide. The papers have been full of it. I wish to know how many of you have read any stories concerning any of those trials? Please raise your hand.

(Some jurors raise their hand.)

MR. JOHNSTONE: Just about all of you have read something concerning the previous trials. How many of you think that having read of those previous trials you might be consciously affected by reading about those previous trials? How many of you? Consciously affected?

You are Mrs. Mollohan and Mrs. Cerny?

MRS. MOLLOHAN: Yes.

MRS. CERNY: Yes.

MR. JOHNSTONE: In other words, Mrs. Mollohan, and Mrs. Cerny, you could not dismiss those stories that you read from your mind, is that correct?

MRS. MOLLOHAN: That's right.

MRS. CERNY: I can't view it on the same prospective as if I had never known a thing about it.

MR. JOHNSTONE: That is thoroughly understandable and I thank you very much for your candor and truthfulness.

Now, ladies and gentlemen, those of you who have read stories about the two previous trials and the disposition of Mr. Parker's case on a plea, how many of you think that you might be unconsciously affected by those stories? You're Number 11. What is your name?

MRS. TRUBY: Truby.

MR. JOHNSTONE: Mrs. Truby, you do think that you might be unconsciously affected by those stories?

MRS. TRUBY: I don't see how you could help but be.

MR. JOHNSTONE: I don't either. Again I thank you

for your candor and truthfulness. You're bound to be affected, aren't you?

MRS. TRUBY: Yes.

MR. JOHNSTONE: Once there's an in-put in the mind, it's there, without any question. You know that, don't you?

MRS. TRUBY: Yes.

MR. JOHNSTONE: Do any of the rest of you think, besides Mrs. Truby, that you might be unconsciously affected by those stories that you have read?

Now, Mrs. Highly, you were one who previously indicated—evidently before I arrived—incidentally, I was down in the Court of Appeals on something. Before I arrived you indicated that you had read newspaper articles?

MRS. HIGHLY: Uh huh.

MR. JOHNSTONE: And I don't know what you were asked about whether or not they would affect you in this case?

MRS. HIGHLY: No, because I didn't read much about her case in it; just her name, that's all.

MR. JOHNSTONE: But you did read about the others?

MRS. HIGHLY: Uh huh.

MR. JOHNSTONE: You read the stories?

MRS. HIGHLY: Yes.

MR. JOHNSTONE: What was your answer to the question that you were probably asked as to whether or not it would affect you?

MRS. HIGHLY: I don't think it would affect anything.

MR. JOHNSTONE: You think it would not?

MRS. HIGHLY: No.

MR. JOHNSTONE: This is one of the most difficult things to do, to get an unbiased jury in a case of great publicity. It's very, very difficult, but that is what we must have if you're going to apply the primary legal principle which is the cornerstone of our entire system of criminal jurisprudence; and a person charged is presumed innocent until proven guilty beyond a reasonable doubt.

Now, no one will think the worst of you or in the slightest respect criticize you, if you, after searching your conscience, can say yes, I probably would be affected by the stories that I have read. We have response from three

of you that you would be. How about the rest of you, would any of the rest of you be affected, do you think? If so, please raise your hand.

Now, Mrs. Truby, I take it in view of the fact that you said you would be or probably would be affected by what you have read, that that would prevent you from being—from approaching this as an unbiased juror, is that correct?

MRS. TRUBY: I would hope not.

MR. JOHNSTONE: Do you think it would?

MRS. TRUBY: I honestly don't.

MR. JOHNSTONE: I don't know how you honestly couldn't.

COURT: Well now, there will be no arguing with the juror. She'll state her own personal feelings and not yours.

MR. JOHNSTONE: All right. Again, do you think you would be affected so that you could not approach this as an impartial juror? No matter where your prejudice might be, if you had any, either for or against the State or for or against the defendant?

MRS. TRUBY: I don't think I could.

MR. JOHNSTONE: You think you could not—

MRS. TRUBY: (Shakes head.)

MR. JOHNSTONE: —approach this in an impartial manner?

MRS. TRUDY: (Shakes head.)

COURT: Do you feel that you could listen to the evidence in this particular case and decide this case not other cases, fairly and impartially?

MRS. TRUBY: Not with all that I have read about it in the papers and such. It's bound to affect you.

COURT: Well, it may affect you. I didn't ask you that, how it affected you. I asked you whether or not you could set it aside?

MRS. TRUBY: I said I hope I could.

COURT: That's all the Court is asking you. Can you do that? That's all you are required. Nobody is perfect, in spite of some of the questions they try to make you perfect. You are all human, and you have human reaction. The most important thing is you have to adopt the one principle that everybody comes into the courtroom, and

under our laws is innocent, not presumed to be innocent like they are saying, but is innocent as far as this Court is concerned. Would you accept that principle?

MRS. TRUBY: I accept that principle.

COURT: And would you decide this case, State of Ohio vs Sandra Lockett, not anybody else, on the evidence that you hear from this witness stand, not from any other outside sources whatsoever? Could you do that and would you do that?

MRS. TRUBY: I would certainly try.

COURT: All right. I will not excuse her.

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COURT: Ladies and Gentlemen of the Jury, the Attorneys at this stage of the proceedings will make opening statements to you. What they say at this part of the proceedings is not evidence and shall not be considered by you as evidence. It's only their, sort of bird-eye view as to what you are to expect from the evidence, and you are only to consider the evidence in this particular case. So again, what the Attorneys say at this stage of the proceedings is not evidence.

You may proceed.

MR. SHOEMAKER: May it please the Court, Counsel and Ladies and Gentlemen of the Jury—because that is now what you are. Formerly, before we took the break, before you took the oath, you were all prospective veniremen and venirewomen who would be selected in this case. You are now selected. You are seated here. You are about to hear the facts as they will unfold to you from this witness chair, and through various exhibits, as to what this case is all about with specific reference to this defendant seated right over here, Sandra. Again, specific reference to what happened on or about the 14th 15th and 16th day of January, 1975 in Summit County, State of Ohio.

What I have to say to you, as the Judge has already instructed you, and as he will instruct you in the phases of the closing arguments, is not evidence and should not be so construed by you to be evidence. It's what you might call a blueprint, floor plan, whatever you want to describe it as, to better enable each and every one of you to follow

what the State's case is all about; and also what the defendant's case is all about when he makes his opening statement.

Now, to start off with, let us review back for a second and let us see whether or not we have enough evidence in this particular case as it shall unfold to you to allow you to deliberate and find whether beyond a reasonable doubt Sandra Lockett on the 15th day of January, 1975, did participate with her brother, James Lockett and Nathan Earl Dew, Al Parker and herself in what's been portrayed over there on the board, Aggravated Murder with Specification 1, Specification 2, and Aggravated Robbery.

Ladies and Gentlemen, the State will present a number of means of evidence to you. Basically these will be witnesses; witnesses who will testify—by and large in most cases—in fact, just about all cases the jurors are not present at the scene of the crime; the Prosecutor is not present; the Court is not present; the Defendant's lawyers are not present. The only way that we have to find out what happened in a criminal case is to present people who saw and heard the various parts, various segments of what happened at the crime.

As in most cases, such as a play, you have various actors that come forward and testify, and allow the jury to determine the facts. Unfortunately, in a criminal case the State of Ohio or the Defense Counsel cannot prestage-cast ahead of time who is going to testify and select with any certainty who will say this, who will say that, because it's already been pre-determined. Always somebody has seen something; somebody has seen something else. So we bring to you the people who are willing to come forward, who saw, heard, touched and from their God-given senses tell you about the various facts of the crime.

The evidence that will be portrayed to you will be basically that Sydney Cohen was a living person on January 15, 1975, had been a living person for approximately 61 years, in Summit County, State of Ohio. Half of Sydney Cohen's life, ladies and gentlemen, was spent in business in the city of Akron; almost 35 years as a pawn broker in downtown Akron. Sydney Cohen operated a pawn shop,

Syd's Market Loan at 42 E. Market Street, Summit County, State of Ohio.

Sydney Cohen was shot to death. This is not in dispute, I don't think, by anybody. The man that had his finger to the trigger, that you will hear from, is Al Parker.

Now, the real question, ladies and gentlemen, as the State's case unfolds to you is whether or not—this is really your sole determination, whether or not as the State's evidence unfolds to you, responsibility, criminal responsibility can be attributed to the feet or at the hands of the participants in the sense, with Al Parker in a natural sense, and to the co-defendants in this case. The real question is whether or not the State of Ohio can produce evidence to show that Sandra Lockett is criminally responsible just as Al Parker is criminally responsible for the actions that occurred in the pawn shop on January 15.

Because in the final analysis your job is to determine criminal responsibility. That's your job. You find facts. You determine who is to be believed, who is not to be believed; but your job is to mete out the responsibility, mete it out, find out if she's responsible.

And during the course of determining this responsibility in this particular case with this particular defendant, you're going to hear from a number of witnesses. And I have already said these witnesses may be such people as Al Parker. In fact, one of them will be Al Parker. You will hear from him shortly, perhaps yet today. Al Parker is a person that the State of Ohio doesn't come forward and say to you he's a fine person, he's someone you'd want to take into your house, someone you'd want to have visit with your friends and relatives, not someone you'd want as a neighbor. We're not saying that. Al Parker is what Al Parker is. He's a person who shot to death Sydney Cohen on January 15. Al Parker is a person who plead guilty to the crime of aggravated murder, a life sentence. And he will tell you that in return for this plea he agreed to do one important facet, one important part in this case, and that's to tell the truth as to the involvement of what these other people, what role they had, what part they played in this whole operation. You will hear from Al Parker. You will hear from other people.

Bear in mind as you hear from Al Parker that as the testimony comes from him and others, that we are dealing with a real-life situation. We are not dealing with a situation that you watch on television where the people come in, you turn it on, you see them do this, and do that. We are dealing with people that live out in the community. We are dealing with real human beings that have their pitfalls, their errors in judgments, past errors in judgment, and maybe they will make more in the future. We are dealing with real-life people.

Crime is not a pleasant business. Some of the people you hear from, like Al Parker, are not pleasant people to hear from.

COURT: Let's get to the evidence in this case.

MR. SHOEMAKER: Al Parker will testify to several things in this case. First of all, that Al Parker along with Sandra Lockett, James Lockett and Nathan Earl Dew left the State of New Jersey. He will tell you that they had all met in New Jersey. You will find out that Sandra Lockett and Joanne Baxter, a friend of Al Parker's went with Sandra's brother, James Lockett, to the State of New Jersey the weekend before this all occurred, on Friday. There in New Jersey they met up—I'm saying Sandra, her brother James, Joanne Baxter met up with Al Parker and Nathan Earl Dew.

Nathan Earl Dew and Al Parker, you will find out, are strangers to this city, not from this community. You will also find out that James Lockett, while his parents live in this community, his sister or half-sister, who lives in this community, live in Akron, he was not a resident of this community either. All these people come back to the city of Akron and they arrive back here at approximately Tuesday evening around four thirty p.m. You will hear that at that particular time a lot of money had been spent by the various parties, particularly Al Parker, as he will testify to you, on the way back from New Jersey. When they get back here, you will find out they were in short supply of funds, short supply of money.

When they get back here, you will hear it's discussed as to how they can get money, specifically the strangers to

the community, so they can leave the community. They don't have any money.

You will hear Al Parker testify as to a plan, a scheme, a design that was hatched out, concocted in the minds of several parties. Certainly one of them was Al Parker. One of them was James Lockett. One of them was Nathan Earl Dew, and he shall tell you, one of the persons who portrayed and took a significant part in this scheme, the evidence will show, is Sandra Lockett, a person who was familiar with this community, familiar with the stores, familiar with this entire area.

You will hear testimony as to her suggestions, her ideas, and her participation in this particular case. You will also hear from a witness who was present on several occasions with Sandra Lockett that overheard her say not only that Syd's Market Loan would be a fine place to rob, but she made several suggestions the night before in front of this witness as to other stores that might be also likely targets, likely subjects.

Ultimately, as the evidence will show, by that night, Tuesday night, Wednesday morning, January 15th, it had been decided that Syd's Market Loan was the best place to go.

You will hear at this particular point no one had a gun. How to rob the store? You will hear as to how Al Parker, as he will tell you, went into the store, as it had been planned and suggested by the other parties, including Sandra Lockett, and asked to see a weapon. In this store was James Lockett, Nathan Earl Dew, acting like they weren't associated with him, having come in a few minutes earlier.

Al Parker asked for a gun; takes two bullets that he has, puts them in the gun, tells the owner of the store, Sydney Cohen, the deceased, that this is a stickup. At this particular point things went wrong. Al Parker shot to death Sydney Cohen.

The evidence will be that at this particular point three people leave the pawn shop. These people run up the street, James Lockett, Nathan Dew, because the plan was all planned out, all discussed, everything was worked out in fine detail except the shooting. That was one thing they

hadn't counted on. Those two, James Lockett, Nathan Dew, they run up the street, across the block, eventually get a bus and go back to Sandra Lockett's parent's house.

Sandra Lockett, as per the plan, was waiting around the corner on High Street, right up from Syd's Market Loan, in Al Parker's car. And there you will find that she along with Al Parker went over to an aunt's house, spent some time there, left in a taxicab. The taxicab was stopped by the Akron Police Department and during that course of travel from the pawn shop, from the Aunt's house, to the situation where the police officers stopped them about two o'clock Wednesday afternoon—the taxicab with Al Parker in it and her in it, that she was aware of what was going on. Even after this crime had occurred, she was still an active participant.

You will hear the taxi driver, for example, testify as to what role she played, what she said when she left her Aunt's house and gave directions as to how to go to this place and that place, basically back to her parents' house.

The State of Ohio will show that Sandra Lockett was not in the store; will show that Sandra Lockett did not pull the trigger, but the State of Ohio will show, I feel, based on the evidence that Sandra Lockett, even though she wasn't in the store and didn't pull the trigger, the evidence will be that she was an active participant the night before, that she helped with the planning of this; she had suggested; she had given ideas; she had given support.

The following Wednesday morning when she and her brother and Nathan Earl Dew went over to get Al Parker at Joanne Baxter's house, over there, again she was an active part in this before they went to the pawn shop. Even after the pawn shop was robbed, she was still an active participant in this scheme by these four people.

This then, ladies and gentlemen, is the State's case. The State does not say she was in the store. The State does say that her activities the night before, before the crime occurred, immediately after the crime, make her guilty of the crime as charged of *aiding and abetting*.

At the conclusion of this particular trial the State will come before you and ask you to find her guilty of that particular charge.

You will hear from Al Parker. You will hear from the taxi driver. You will hear from Joanne Baxter. You will hear from other witness to show you these facts as to what I have just been talking about.

COURT: Mr. Johnstone?

MR. JOHNSTONE: Your Honor, please, Counsel, Ladies and Gentlemen of the Jury—Mr. Shoemaker has set out in great detail what he expects the State to prove, and I hope you remember what he has said, and to what extent he does prove what he has said.

Now, this is what we expect the evidence to prove, not only what we may put on at the appropriate time in this case but also what may be gleaned from the State's witnesses—witness or witnesses.

I gather from what Mr. Shoemaker said that the chief State's witness will be Al Parker, a murderer. His testimony was bought and paid for by the State of Ohio. The facts will prove the actual trigger man was permitted to plead to a crime for which he cannot possibly be sentenced to the electric chair.

I trust that when you listen to what he has to say, you will bear that in mind; but the State bought his testimony, the evidence will show, for the purpose of attempting to get three other people sentenced to the electric chair, one of whom was not even present at the scene of the crime. That's Sandra Lockett.

The evidence will show that these people from Akron did in fact go to New Jersey. I think the evidence will show that that's where James Lockett, Sandra Lockett's brother lived, where Earl Dew lived, and where the trigger man Al Parker lived.

The evidence will show that they started back to Akron in two automobiles; that one or both of them were stopped in Pennsylvania by Traffic Police, probably the State Highway Police, for speeding; that both of the drivers had to pay a fine.

The evidence will disclose also there was trouble with one of the automobiles causing them some delay and causing them to have to stay overnight on the way back.

The evidence will disclose in our opinion not that they concocted a conspiracy to rob Sydney Cohen, but that they were discussing ways to get money, the logical way to get money so that the people could go back to New Jersey.

The evidence will disclose that as far as Sandra Lockett is concerned all that she knew was that Earl Dew and James Lockett were to go into that pawn shop and pawn Earl Dew's ring, which has been or will be stipulated to have a pawnable value of at least $100; solely for the purpose of getting sufficient money to go back to New Jersey.

The evidence will disclose that Sandra Lockett was not on the scene of the accident; that she had not had any lunch on that day; that she went to a nearby restaurant to get a sandwich or something to eat; that while in that restaurant she saw the triggerman, Al Parker, go back to his automobile whereupon she left the restaurant and joined him.

The evidence will disclose that he was not running, not fleeing, that he was walking back to his automobile.

The evidence will disclose that Sandra L ckett thought that they had pawned the ring, and that they were ready to go back home.

The evidence will disclose that we are not going to present any evidence whatsoever to justify this accidental killing of Sydney Cohen, and the State's own testimony will indicate that this was an accidental killing, not a planned thing at all. That insofar as Sandra Lockett is concerned, she is entirely innocent of this crime, not being there and not being any participant in any scheme to rob Sydney Cohen.

Ladies and Gentlemen, there will be a lot of other facts brought out, some of which will be by way of stipulations. We will not offer anything whatsoever to attempt to either condone the crime that was committed or to mislead this jury. We will tell the story as we know it and we will get from the State's witnesses that which we can, admittedly a difficult task.

Briefly, ladies and gentlemen, that is what we think the evidence will prove, that Sandra Lockett, far from being a person who had a Smith & Wesson pistol, serial number so and so, blue steel, in her possession or under her control,

never even saw that gun until Al Parker tried to thrust it on her in the taxicab and she refused to take it.

Whereupon, the evidence will show Al Parker stuck the gun under the seat. The evidence will show that Sandra Lockett did not kill Sydney Cohen as charged in the indictment: "she did kill Sydney Cohen in the city of Akron, Summit County and State of Ohio, with a deadly weapon which was on or about her person or under her control." I defy the State to prove that.

The evidence will disclose that they did not flee, that she voluntarily went down to the Police Station when she heard from some source that they were looking for several people who had been concerned in this killing, this accidental killing of Sydney Cohen. That's not the action of a guilty person, ladies and gentlemen.

The evidence will disclose, ladies and gentlemen, that this was really a horribly unfortunate circumstances in which Sandra Lockett did not participate and which, although highly regrettable, something over which she had no control.

Thank you.

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AL PARKER

was duly sworn according to law, and testified as follows:

DIRECT EXAMINATION BY MR. SHOEMAKER:

Q Would you give your complete name to the Court this time, please?

A Al Parker.

Q Al, how old are you?

A Twenty-five.

Q Do you know the year that you were born in?

A 1949, April 5th.

Q What state were you born in?

A Sumter, South Carolina.

Q How far did you go in school?

A Fifth grade.

Q Why did you stop?

A To work.

Q To work where?

A On a farm.
Q Do you have any brothers and sisters?
A Yes, sir.
Q How many brothers and how many sisters?
A Six brothers, four sisters.
Q This farm that you went to work on, did your family live on that farm?
A Yes, sir.
Q What kind of farm was it? What did they raise?
A Cotton, corn, stuff like that.
Q Who owned the farm?
A A white man.
Q Did other black families live on that farm?
A Yes, sir.
Q How long did you work on the farm, Al?
A Until I was seventeen.
Q You never went back to school after you quit the fifth grade?
A No, sir.
Q When you were aged seventeen, Al, where did you go?
A To Thomasville, North Carolina.
Q What did you do in Thomasville, North Carolina?
A Work.
Q What type of work did you do there in Thomasville?
A In a factory.
Q What kind of factory was it?
A Furniture factory.
Q About how long did you spend in Thomasville, North Carolina?
A About three years.
Q Some of your family still back there in Sumter, South Carolina?
A Yes, sir.
Q Parents still living?
A My mother.
Q When you left Thomasville, North Carolina, Al, where did you next go to?
A New Jersey.
Q Where in New Jersey?
A Newark.

Q When you went to New Jersey, were there any relatives of yours in New Jersey at that point?
A Yes, sir.
Q Who?
A My brother.
Q What's his name?
A Willie Green.
Q Have you ever used any other name besides Al Parker?
A Yes, sir.
Q What name is that?
A Charles Green.
Q Is that the name you were born with?
A Yes, sir.
Q Now, when you got to Newark, did you have any jobs in Newark?
A Yes, sir. I went to work with my brother.
Q What's the first job that you had in Newark?
A Making big drums. I was a spot welder.
Q Metal drums?
A Yes, sir.
Q Fifty-five gallon barrels?
A Right.
Q How long did you have that job?
A About two years.
Q Did you have any other jobs up there in Newark?
A I had a couple others.
Q Where are you currently residing?
A What did you say?
Q Where are you staying at now?
A In jail.
Q Where did you live in Newark?
A In Orange, New Jersey.
Q That's where you lived before you came here in Akron?
A Yes, sir.
Q Where did you live up there?
A With my brother.
Q The one you just mentioned?
A Yes, sir.
Q Do you have a car?

A Yes, sir.
Q What kind of a car was that?
A Lincoln.
Q Before you came to Akron, Al, were you employed, did you work anywhere?
A Yes, sir.
Q Tell the jury where you worked?
A Poly-Casto.
Q What is Poly-Casto?
A It's a trucking outfit.
Q What were your duties at the trucking outfit?
A Sometimes I helped on the truck; sometimes I drive the truck.
Q This is a general trucking company, hauls different types of merchandise?
A Yes.
Q Were you a full-time employee there?
A Yes, sir.
Q Now, did you ever become acquainted with a man by the name of Nathan Earl Dew?
A Yes, sir.
Q Where did you first meet him at?
A In Newark, New Jersey.
Q How long have you known Nathan Earl Dew?
A I met him in 1970.
Q And where did you meet him at?
A We used to live across the street from each other.
Q In Newark?
A Right.
Q Did you ever socialize or go places with Nathan Dew?
A Yes, sir.
Q Are you married?
A Yes, sir.
Q What's your wife's name?
A Dale.
Q Do you have any children?
A Yes, sir.
Q How old are they?
A Six, five, and twenty months.
Q Are they boys or girls, or what?

A Girls.

Q Where is your wife at now?

A Chicago.

MR. JOHNSTONE: Six, five, and what?

WITNESS: Twenty months.

Q Now, Al, was your wife living in Chicago when you were in New Jersey before you came down here?

A Yes, sir.

Q Do you want to tell the jury why you were separated from your wife?

A Me and my mother-in-law didn't get along. I left my wife and went back to New Jersey.

Q Back where the trucking company was?

A Yes, sir.

Q Have you ever plead guilty to a violation or been found guilty of a violation of state or federal law, Al?

A Yes, sir.

Q Any in New Jersey?

A Yes, sir.

Q Do you want to tell the jury what these things were?

A B & E, a receiving, larceny.

Q You're talking about breaking into a place when you say B & E? Is that what you mean, a burglary?

A Right.

Q The place that you broke into, is that a house or factory or business or what?

A This was a Bar.

Q Did you actually go into the Bar?

A No. When the police come, I was in the car, sitting in the car.

Q You got arrested along with the others?

A Yes, sir.

Q Did you ever plead guilty to any crime in Summit County, Ohio?

A Yes, sir.

Q What crime was that?

A Aggravated murder.

Q Now, I want to direct your attention, Al, to the weekend and the Friday before January 15, a Wednesday. Go back. Let your mind go back just a little bit. Were you

living in Newark at that time?

A Say that again now?

Q Okay. The Friday before all the episode happened at the pawn shop, were you living in New Jersey at that time?

A Yes, sir.

Q Did you ever have occasion that Friday or that weekend before all this to meet a person by the name of Joanne Baxter?

A No, sir.

Q Okay. Did you ever meet Joanne Baxter?

A Yes, sir.

Q When did you meet Joanne Baxter?

A On a Friday night.

Q Friday night? Did you ever meet a person by the name of Sandra Lockett?

A Yes, sir.

Q When did you meet her?

A On a Friday night.

Q Is the person known to you as Sandra Lockett in this courtroom?

A Yes, sir.

Q Do you want to tell the jury and the Court where she is located at?

A The young lady with the blue on.

Q Let the record indicate the witness has identified this defendant. Where was the place at that you met Joanne and Sandra?

A In a Bar.

Q Were they together?

A Yes, sir.

Q About what time of the day was it on Friday when you met these two?

A About eleven o'clock Friday night.

Q And how long did you stay with these two people, approximately, that Friday night.

Q Until about six thirty we went different places, six thirty that Saturday morning.

Q Was anybody else with you besides you and Sandra and Joanne?

A Yes, sir.

Q Who?

A There was quite a few of us. There was another friend of mine. There was quite a few, was about seven or eight of us. I don't remember all the names.

Q Six thirty Saturday morning what happened then?

A I took this Joanne Baxter and Miss Sandra Lockett home.

Q Where was home at that time?

MR. JOHNSTONE: I didn't get that?

Q Would you repeat your answer? What you did with Sandra and Joanne at six thirty?

A I took Miss Sandra Lockett and Miss Joanne Baxter home.

Q Where was home at that time?

A They was living in Jersey City.

Q You took them home in your car?

A Right.

Q What's the next thing that you did after you took them home?

A I went home.

Q And that's to your brother's place?

A Yes, sir.

Q Did you work Friday before all this happened?

A Yes, sir.

Q Planning to go to work the following Monday?

A Yes, sir.

Q That's at Poly-Casto, the trucking company?

A Yes, sir.

Q Now, Saturday, did you ever see Joanne Baxter any more Saturday?

A Yes, sir.

Q About what time did you see her next?

A About five, six o'clock on Saturday afternoon.

Q And where did you see her at?

A Where I took them home in Jersey City.

Q The same place you dropped them off earlier in the morning?

A Yes, sir.

Q Did you have occasion to see Sandra Lockett?

A Yes.

Q About the same time?

A Yes, sir.

Q Okay. What did you do at this particular time, Saturday afternoon, with these two people? What's the next thing that happened?

A Me and Miss Joanne Baxter went riding.

Q Okay. Where did you ride to?

A We ride over to Jersey City, went to Newark, come back to Jersey City.

Q Did Sandra go with you on that trip?

A No, sir.

Q That was just you and Joanne?

A Right.

Q About what time did you and Joanne Baxter get back after you were riding around, approximately?

A About eight thirty, nine o'clock.

Q Was Sandra there when you got back?

A Yes, sir.

Q What's the next thing that happened?

A Miss Joanne Baxter, she changed; get dressed and Miss Sandra Lockett get dressed, and we ride out.

Q You mean dressed up to go somewhere?

A Yes, sir.

Q How many people left to go somewhere?

A Three.

Q You?

A Miss Sandra Lockett, Miss Joanne Baxter.

Q Where did the three of you go?

A Went over to Newark.

Q Where about in Newark?

A To another friend of mine house.

Q Who was that?

A Henry Martin.

Q How long were you there?

A About 15, 20 minutes.

Q Where did you go then?

A We went to a Club.

Q And did you meet anybody at the Club, see anybody that you know at the Club.

Q Yes. There were people I knows there. Right.

Q Now, what did you do at the Club?

A We went in the Club.

Q What did you do while you were there, the three of you?

A It was four of us then.

Q Four of you? Henry Martin went with you?

A Right.

Q What did the four of you do there?

A Me and Miss Joanne Baxter, Mr. Henry Martin and his old lady, we went in the Club.

Q Okay. Did you ever have occasion to see a man known as Nathan Earl Dew that Saturday?

A Yes, sir.

Q When did you see him in relation to being in the Club?

A He was at Mr. Henry Martin's house when I get there.

Q Did he ever go to the Club with you people or arrive there?

A All of us went there together.

Q How many cars did you go there in?

A Two.

Q Nathan Earl Dew went in one car?

A Right.

Q Who was in his car?

A Miss Sandra Lockett.

Q The defendant seated here?

A Yes, sir.

Q Who went in your car?

A Me, Joanne Baxter, Henry Martin and his wife.

Q About how long did you stay there at the Club, Al?

A Until it closed, about quarter to two.

Q When you left, who did you leave with?

A Me and Miss Joanne Baxter, Mr. Henry Martin and his old—his wife.

Q Where did you go, the four of you?

A Jersey City.

Q Did Sandra go with you?

A No, sir.

Q Did Nathan Dew go with you?

A No, sir.

Q They were still back at the Club when you left?

A They weren't at the Club.

Q Had they left the Club?
A They didn't never come in.
Q Never came inside?
A No.
Q Where did the four of you go when you went to Jersey City?
A We went to the hotel.
Q How long did you stay there?
A Well, me and Mr. Henry Martin and his old lady, we stay until twelve o'clock the next day. I took Miss Joanne Baxter home about four thirty, five o'clock that morning.
Q And where was home to her, back at that same place?
A In Jersey City, right.
Q Where she was staying with Sandra?
A Right.
Q Then you came back to the hotel?
A Right.
Q When you took Joanne home about six thirty, did you ever see Sandra or Nathan Dew at that point?
A No, sir.
Q When you left the hotel—this is Sunday around noon, is that correct?
A Right.
Q Where did you go?
A Went over to Mr. Henry Martin's house.
Q How long did you stay there?
A Until about four or five that afternoon.
Q Okay. Then where did you go?
A I went back over to Jersey City.
Q And where did you go over there?
A Over to where Miss Joanne Baxter and Miss Sandra Lockett were living at.
Q Did you see Joanne Baxter on Sunday evening?
A Yes, sir.
Q Did you see her when you went over there to Jersey City?
A Yes, sir.
Q Did you see Nathan Dew at that time?
A No, sir.
Q Did you see Sandra at that time?

A No, sir.

Q When you got back over to Jersey City, what did you and Joanne do?

A We went riding again.

Q Tell the jury just generally where you went and what you did?

A Went over to Newark riding; riding around Jersey City; went to a couple Bars and had a few drinks; then I took her back home.

Q About what time did you take her back home?

A About ten o'clock.

Q Where did you go then?

A I went back to Mr. Henry Martin's house.

Q And did you spend the night there at Henry Martin's house or what?

A Yes, sir.

Q Now, when is the next time that you see Nathan Dew?

A About five thirty or six o'clock on Monday morning.

Q Where did you see him at?

A He come to Henry Martin's house.

Q Get you up?

A Right.

Q Did you have a discussion with him?

A We talked a little bit.

Q Did you see Sandra Lockett at that point?

A No. She didn't come up there.

Q Did you ever leave after you had had this talk with Nathan Dew that morning?

A Yes, sir.

Q Where is the first place you went to?

A To his sister's house.

Q How did you get over to his sister's house?

A I drive my car over there.

Q Did Dew come in his car or what happened?

A No. Mr. Dew was driving Miss Sandra Lockett's car.

Q He had been outside?

A Right.

Q Did you have any conversation with Sandra Lockett before you left Henry's house that morning?

A No, sir.

Q You went over to Nathan Dew's sister's house?
A Right.
Q What did you do when you got to Nathan Dew's sister's house, first of all?
A I sat down in the car for a while; then I went upstairs in the house.
Q Who did you sit out in the car with?
A Me and Miss Joanne Baxter and Mr. David Ford.
Q Joanne Baxter was in the car?
A Right.
Q How long did you stay there at Nathan Dew's sister's house?
A About 10 or 15 minutes.
Q Did you actually go into the house?
A Right.
Q And did Dew go into the house?
A Yes, sir.
Q Okay. What did you go in the house for?
A To talk to Mr. Dew.
Q Did you talk to Mr. Dew?
A Yes, sir.
Q After you talked to Mr. Dew, what's the next thing that happened? Where did you go?
A I went home.
Q Okay. How long did you—this is over at your brother's or at Henry's house?
A No, my brother's.
Q Did you ever have occasion to see Nathan Dew any more that day?
A Yes, sir.
Q What time did you see him?
A About two thirty or three o'clock.
Q Are you familiar with the name of James Lockett?
A Yes, sir.
Q Do you know who James Lockett is now?
A Yes, sir.
Q Did you ever meet James Lockett in New Jersey?
A Yes, sir.
Q Where is the first time that you met James Lockett at in New Jersey?
A Getting out of jail.

Q What day was this?
A On Monday.
Q About what time?
A About five thirty or six o'clock in the afternoon.
Q Had you gotten any money from your employer that day?
A Yes, sir.
Q How much?
A Two hundred thirty dollars.
Q Why did you get the two hundred thirty dollars?
A To give Mr. Dew have sixty dollars to get Mr. James Lockett out of jail.
Q Now, after you had gotten James Lockett out of jail—withdraw that. Who did you go over to get him out with? Who was with you?
A Nathan Dew, Sandra, Joanne Baxter, David Ford, Me.
Q Now, before you got James Lockett out of jail the Monday, had you ever had any conversation with the defendant here, Sandra Lockett about jail?
A Yes.
Q What was that?
A She told me that, "Al, they was locked up in Jersey City."
Q She said, "Al, they was locked up." Who are you referring to?
A Her, Mr. Nathan Dew, Mr. James Lockett.
Q Now, was it ever discussed about coming to Ohio at any time?
A No, not then.
Q When was the coming to Ohio talked about?
A After we left the jail and get back, you know.
Q Who was to come back to Ohio? Who wanted to go back to Ohio?
A Say that again?
Q Who wanted to go back to Ohio? Who was planning to go back to Ohio?
A Oh, Miss Sandra Lockett, Miss Joanne Baxter, Mr. James Lockett, and Mr. David Ford.
Q Did in fact they ever leave to go back to Ohio?
A Yes, sir.

Q About what time Monday did they leave to go back to Ohio?

A About six o'clock, six thirty.

Q Now, did you go along with them?

A Yes, sir.

Q What was your reason initially to go back or to start off with them?

A Well, we started off to show them Route 80 to get back here.

Q When you left did you take your Lincoln?

A Yes, sir.

Q Was Sandra in any car when she left?

A Yes, sir.

Q What kind of car was that?

A Monte Carlo.

Q Do you know what year it was?

A No, sir. I am not sure.

Q Was it a new one?

A I think so.

Q Okay. Who was in your car when you started to go back to Ohio?

A Me and Miss Joanne Baxter, Mr. David Ford.

Q Who was in Sandra's car?

A Miss Sandra Lockett, Mr. Nathan Dew, Mr. James Lockett.

Q Did you drive all the way through to Ohio, Al?

A No, sir.

Q Where did you stop on the way?

A In Pennsylvania.

Q Spend the night somewhere?

A Yes, sir.

Q What kind of place did you spend the night at, do you know?

A Holiday Inn.

Q What was the weather like that particular Monday afternoon and Monday night?

A It was bad; ice on the road; it was very bad out.

Q That's one of the reasons you stopped?

A Yes, sir.

Q Did you pay for any of the gas on the way back?

A Yes, sir.

Q For your car?
A Yes, sir.
Q Any for Sandra's car?
A Couple of times.
Q Who paid the bill for the Holiday Inn?
A I did.
Q Okay. When you left New Jersey, about how much money did you have with you?
A I had about a hundred fifty dollars because I had about twenty or thirty dollars before I got the money from my boss.
Q You had already spent sixty dollars getting James out of jail?
A Right.
Q On the way back to Ohio were you ever stopped by the police?
A Yes, sir.
Q What was the reason for the police stopping the cars?
A Speeding.
Q Which cars were stopped?
A Both of them.
Q Who was driving both cars at the time they were stopped?
A Miss Sandra Lockett was driving one. Miss Joanne Baxter was driving one.
Q At that particular point was any fine paid?
A Yes, sir.
Q How much?
A Fifty dollars.
Q A piece or for both?
A For both cars.
Q Who paid that?
A I did.
Q About what time did you arrive back in the Akron area, Al?
A About four, four thirty.
Q That's Monday?
A Right—no, Tuesday.
Q Tuesday, okay. When you got back here Tuesday about four thirty, where is the first stop that you made?

Where did you go to first?

A Went over to Miss Sandra Lockett's house.

Q Do you know the street or the area in Akron where that's located at?

A No, sir.

Q Would that be in the North Street area?

A Yes, I think so.

Q Do you know if Sandra Lockett's parents live in that area?

A Yes, sir.

Q How many houses are there at that area that the Locketts have, do you know?

A I think it's two.

Q Okay. The parents live in one house?

A Yes, sir.

Q Who lives in the other house, if you know?

A I think it's some of their relatives.

Q About how long did you stay at that point there at the Locketts' house Tuesday, the first time when you got there?

A About 45 minutes, the first time.

Q Okay. Now, was one of these houses bigger than the other house?

A Yes, sir.

Q One is a little house and one is a big house?

A Yes, sir.

Q Which house were you in when you first got to Akron, the little house or the big house?

A I went in the little house, then we went up to the big house.

Q Was this the first time that you were ever in Akron?

A Yes, sir.

Q Now, did you ever have any discussions with Nathan Dew in this 45 minute period after you first got to the Locketts' house?

A Yes, sir.

Q Okay. Did Sandra Lockett, the defendant, ever become a part of these conversations or discussions?

A Yes, sir.

Q Okay. Where were these being held at, which house and where?

A In the little house.

Q What was discussed at this particular point amongst you, Sandra, Nathan Dew, tell the jury?

A Well, we started out, me and Mr. Dew was talking. He was going to pawn his ring, and Miss Sandra Lockett walked in and heard what we were talking about; then she tell him that the ring was a nice ring, too beautiful ring to pawn; that she know how we could get some money.

Q Did she say how you could get some money?

A Yes, sir.

Q Tell the jury what she said?

A She knows a couple places that we could rob.

Q At this point was anything else discussed at this time about that?

A No, not then.

Q Was anybody else a part of these discussions besides the three of you at this point?

A No, sir.

Q Just the three of you at that point?

A Yes, sir.

Q Did you have occasion or did you leave—

A Yes.

Q —the Locketts' house?

A Yes.

Q Where were you going?

A Miss Sandra Lockett wanted me to take her to the Clinic.

Q What kind of Clinic is that, do you know?

A Methadone Clinic.

Q Methadone Clinic?

A Yes, sir.

Q Do you know what methadone is?

A Yes, sir.

Q What is it?

A It's something like if you be sick on heroin, keep you from being sick on heroin.

Q Heroin?

A Yes, sir.

Q Who went to this Methadone Clinic?

A There was four of us left out.

Q Whose car?

A My car.

Q Who's the four of you that left out to go to the Methadone Clinic?

A Me and Mr. Nathan Dew, Miss Joanne Baxter, Miss Sandra Lockett.

Q Did you actually go to the Clinic?

A Yes, sir.

Q Did Sandra go into the Clinic?

A Yes, sir.

Q About how long was she there?

A About five or ten minutes.

Q On the way to the Methadone Clinic, was there any discussion in the car amongst the four of you about this robbery?

A Yes, sir.

Q Tell the jury what was discussed and who was talking about it?

A Well, when we was going to the Clinic she started off that after we went to the Clinic she was going to show us these two places.

Q Now, you're saying she, referring to Sandra?

A Yes, sir.

Q Did she name the two places at this point?

A Yes, sir.

Q Tell the jury which places she had named?

A The grocery store by the name of Easton and a furniture store.

Q Now, after you left the Methadone Clinic, where did the four of you proceed to or go next?

A We were going to this funeral home. I had to stop and get some gas. I stop and get the gas. Then we went on to the funeral home.

Q Was there any discussion about any robbery at this particular point?

A Not after we was going—not until we get to the funeral home.

Q Okay. What was the reason to go to the funeral home, do you know?

A Miss Joan Baxter had to get her keys.

Q Which funeral home? Was this the Turner Funeral Home?

A I think so.
Q It's on the north side?
A Yes, sir.
Q Who told you or gave you directions on how to get to the Methadone Clinic?
A Miss Sandra Lockett.
Q Did Joanne Baxter go into the Turner Funeral Home?
A Yes, sir.
Q Who did that leave out in the car?
A Me, Mr. Nathan Dew, Miss Sandra Lockett.
Q Any more discussions in the car amongst the three of you while Joanne Baxter is inside of the funeral home?
A Yes, sir.
Q Tell the jury what those discussions were.
Q When we leave the funeral home that we were going by this grocery store, Easton's.
Q Who was saying these things?
A Miss Sandra Lockett.
Q What else did she say about Easter's grocery?
A We'd rob them. We got to get him real quick; he's a big guy and he carries a 45.
Q When Joanne Baxter came out of the Turner Funeral Home, who gave you directions on how to leave that area?
A Miss Sandra Lockett.
Q And where did she tell you to drive by?
A Easter's.
Q Easter's grocery?
A Yes, sir.
Q Did you actually go by that particular building?
A Yes, sir.
Q Did you ever stop there in that area?
A I turned around right by the store.
Q At this point there's still four of you in the car?
A Yes, sir.
Q Any discussions by Sandra in the car at that point, which you are turning around by Easter's grocery store?
A She said, there's the store I'm talking about.
Q Did she say anything else at that point, that you recall, about the operator or anything?

A She said, if you get him, you got to get him quick.

Q Now, when you left this area, where is the next place that you went to?

A We went over to Miss Joanne Baxter's house.

Q And what happened there? How long were you there?

A About 15 or 20 minutes.

Q Did all four of you go in?

A Yes, sir.

Q When you left, where did you go?

A We went by another house.

Q Who told you how to get to that house?

A Miss Joanne Baxter.

Q And did Joanne ever go into that house?

A Yes, sir.

Q When she came back out, did she have anything with her?

A Yes, sir.

Q What's that?

A Marijuana.

Q Do you call it a reefer?

A Yes, sir.

Q Have you smoked a reefer in the past?

A Yes, sir.

Q Do you use anything else besides reefers?

A No, sir.

Q Do you drink?

A Yes, sir.

Q How would you characterize how you drank—moderate, a lot or what?

A I don't drink a lot. If I go in a Bar, maybe I'll have a beer, something like that.

Q Okay. When you left the house there, when Joanne came out, where is the next place that you went?

A We come back over to Sandra Lockett's house.

Q Back over on North Street?

A Yes, sir.

Q And did all four of you go in?

A Yes, sir.

Q How long were you there?

A About an hour.

Q Did you have any further discussions there at that particular house about the robbery?

A No, not no more, not then.

Q Not then. Did you ever later on have discussions?

A Yes.

Q That was at the Lockett house?

A Yes.

Q Which house—big one, little one?

A Big house.

Q Who was present at those discussions?

A Me, Mr. Dew, Mr. James Lockett, Miss Sandra Lockett.

Q Did you have anything to eat there Tuesday night at the Locketts'?

A Yes, sir.

Q What did James Lockett say about this discussion there at the Locketts' house Tuesday night, about the robbery?

A Well, he was in with us; he would go down with us to rob the place.

Q Sandra was present when all this was being talked about?

A Yes, sir.

Q Was it ever discussed on how a weapon or a gun would be obtained?

A Yes, sir.

Q That's at this same time this is being talked about?

A Yes, sir.

Q Okay. Would you tell the jury who talked about that and what was said?

A At first she was saying her father had some guns in the basement in a room; she could get the key and get one, but it was too late to rob the store and the furniture place, so we didn't need the gun now because the store was closed.

Q That's the furniture store?

A And the grocery store.

Q Okay. Was the pawn shop ever discussed?

A Yes, sir.

Q About this same time?

MR. JOHNSTONE: I respectfully suggest Counsel is

leading the witness. I object.

COURT: Overruled.

Q Was the pawn shop ever discussed?

A The pawn shop, the first thing we was talking about pawning the ring.

Q Was it ever talked about robbing the pawn shop?

A Yes, Sir.

Q Was Sandra present at that time?

A Yes, sir.

Q What was said about robbing a pawn shop?

A Mr. James Lockett and Nathan Dew go in; I wait outside, then go in and get the gun to rob the pawn shop.

Q What did Sandra Lockett have to say about all this?

A She was to show us the pawn shop, but she had to stay in the car. That was her brother. She couldn't go in.

Q She knew the pawn shop operator, is that what you meant?

A Yes, sir.

Q Did you have any bullets on you at that particular point?

A Yes, Sir.

Q Tuesday night, Al, how was it determined who would go in and get the gun at the pawn shop?

A I was the one who had the bullets. Mr. James Lockett tell me what to do—go in and ask the man let me see the gun, drop two bullets in it.

Q What was Sandra supposed to do?

A She was sitting out in the car.

Q What was James Lockett and Nathan Earl Dew supposed to do?

A Mr. Dew and Mr. James Lockett supposed to go in and to get the man's attention like they are pawning a ring; and I was supposed to walk in behind them and ask him to let me see the gun; put the two bullets in it.

Q Now, did you ever ride by that particular pawn shop Tuesday night?

A Yes, sir.

Q Who was with you when you rode by?

A Me and Mr. Nathan Dew and Miss Sandra Lockett.

Q Was anything said by anybody when the three of you went by the pawn shop?

A Yes, sir.

Q What was that?

A Miss Sandra Lockett told us that's the pawn shop she's talking about.

Q Tuesday night did you make—after you had gotten back from the Methadone Clinic, had you made several trips in the car to and from the Locketts' household on different occasions?

A Say that again now?

Q After you got to the Lockett household on Tuesday, Tuesday night, did you make several trips in and out of the house in the cars?

A Yes, sir.

Q Where did you spend Tuesday night at?

A Miss Joanne Baxter's.

Q How did you get over there to that area?

A Mr. David Ford showed—no, Miss Sandra Lockett and Mr. Nathan Dew took me up there.

Q Dropped you off?

A Yes, sir.

Q What happened to your car at that point, if you know?

A Mr. Nathan Dew and Miss Sandra Lockett drive me back.

Q Did you ever see the following day, Sandra Lockett?

A Yes, sir.

Q Wednesday, about what time did you see her?

A About twelve o'clock, I would say.

Q That was over at Joanne's?

A Yes, sir.

Q Now, who else did you see about this same time besides Sandra?

A Mr. Nathan Dew, Mr. James Lockett.

Q How many bedrooms does Joanne's apartment have over there?

A Two.

Q Were you ever present in any one of those bedrooms with James Lockett, Sandra Lockett and Nathan Dew that morning?

A Yes, sir.

Q Was anyone else in that apartment at that time be-

sides the four of you?

A Yes, sir.

Q Who is that?

A Miss Joanne Baxter, and her cousin.

Q What's the cousin's name?

A I think it's Leon.

Q Did you have a conversation, the four of you—you, Sandra, James and Nathan Dew, in one of those bedrooms?

A Yes, sir.

Q What were those conversations? What did they consist of? Who said what?

A Mr. James Lockett asked if we was still going to do it? Everybody said yeah.

Q Everybody include Sandra when they said yeah?

A Me, Mr. Dew, Miss Sandra Lockett say yeah.

Q Joanne Baxter wasnt in the bedroom at this point?

A No, sir.

Q Leon wasn't in the bedroom at this point?

A No, sir.

Q Now, when you left Joanne's house that Wednesday morning, who left with you in your car?

A Me, Miss Sandra Lockett, Mr. Nathan Dew, Mr. James Lockett and Leon.

Q How far did Leon go with you?

A I dropped him off at home.

Q Do you know what street that was?

A No, sir.

Q Would that be Snyder Street?

A Say it again?

Q Snyder Street?

A I don't remember the street.

Q Who gave you directions how to drop Leon off?

A Miss Sandra Lockett.

Q Just left the four of you in the car at that point?

A Yes, sir.

Q Where did the four of you drive to?

A Downtown.

Q Who told you how to get downtown?

A Miss Sandra Lockett.

Q Where did you go downtown, Al, when you got

downtown?

A We went by the pawn shop two or three times.

Q The pawn shop you had been by the night before?

A Yes, sir.

Q Anything said by anybody when you went by the pawn shop on those two or three times?

A Well, when we get by, Miss Sandra Lockett said, that's the pawn shop.

Q Did anybody else say anything?

A No, wasn't nothing said.

Q Did you ever park the car, your car, about that point?

A Yes, sir.

Q Tell the jury where you parked the car at?

A Right on the corner by a hamburger place.

Q After you parked the car, what happened then to the occupants or the people in the car? What did they do?

A Mr. Nathan Dew, Mr. James Lockett got out, and went down to the pawn shop.

Q How long after those two had gotten out of your car did you get out of the car?

A By the time they turned the corner, I switched the car off and I got out and went down to the pawn shop behind them.

Q Before you left the car, did you have any conversations with the defendant Sandra?

A Yes, sir.

Q What conversation did you have with her?

A I told her, like two minutes after we was gone to switch the car, to crank the car up.

Q Start it up?

A Yes, sir.

Q When James Lockett and Dew got out of the car, at that point did you have anything to say to them?

A No, sir.

Q When you walk into the pawn shop, was Nathan Dew there?

A Yes, sir.

Q What was he doing at that point?

A He was talking to the pawn worker.

Q The man that runs the pawn shop?

A Yes, sir.

Q Was James Lockett in the pawn shop at that point?

A Yes, sir.

Q What was he doing at that time?

A Standing by the front window.

Q Tell the jury what you did when you walked into the pawn shop first of all?

A I walked past all of them, standing up near by them a second or two and I see the pistols and I tell the pawn broker let me see, so he let me see. I asked him how to open it. He showed me how to open it. It was a little pin in the bottom of it that you had to screw to open it. I gave it back to him.

Q What's the next thing that happened after you had given this gun back that had the screw pin in it?

A Mr. Nathan Dew walked over to me and points out a pistol and said, "that's a nice target practice gun."

Q What happened then?

A I asked the pawn worker to let me see it.

Q Did you tell him, will you show me the gun?

A Yes, sir.

Q Then what happened?

A He showed me how to open it.

Q Then what happened?

A When he opened it, he handed it to me.

Q What did you do?

A I turned it aside, stuck my hand in my pocket, take two bullets out, drop them in, close it up and tell him it was a stickup.

Q You had the gun in your hand with two bullets in it at that point?

A Yes, sir.

Q Where was the pawn broker in relation to you?

A Standing right in front of me.

Q On the other side of the counter?

A Yes, sir.

Q Now, what happened at this point in time, Al?

A By the time I told him—I get the two bullets in, get the gun around to tell him it's a stickup, he snatched the gun, the gun went off.

Q The gun went off? Was the gun in your hand?

A Yes.

Q When the gun went off, was your finger on the trigger?

A Yes, sir.

Q When the gun went off, what is the next thing that the pawn broker did that you are aware of?

A Well, he was—looked like he was reaching down to something.

Q What did you do?

A I peeped over behind the counter to see what he was doing. I thought he was getting a gun.

Q What did you see when you peeped?

A He was mashing an alarm.

Q You say mashing an alarm?

A Right.

Q I'm going to show you State's Exhibit No. 22, Al, and ask you to look at that. Can you identify what that is?

A The mashing that—

Q You say he was mashing this thing here?

A That's right.

Q I'm going to show you State's Ex. 2, do you recognize that gun?

A It looks like the gun.

Q Looks like the gun that you had in there that day that the pawn broker gave you?

A Yes, sir.

Q When the gun went off in the store, was Nathan Dew inside the store?

A Yes, sir.

Q Was James Lockett inside the store?

A Yes, sir.

Q I believe you said that you made a statement "he mashed the alarm."

A Yes, sir.

Q At the time you made that statement were Dew and Lockett still in the store?

A Say that again?

Q When you said "he mashed the alarm" was Nathan Dew still in the store?

A Yes, sir.

Q James Lockett still in the store?

A Yes, sir.

Q At this point after you made this statement, what did the three of you do? Tell the jury what happened next?

A I told them he was mashing the alarm, let's run out; so everybody run out.

Q To your knowledge did you ever know if anybody else was in the store besides you, the pawn broker, James Lockett and Nathan Dew?

A I didn't see nobody in the store but I heard Mr. James Lockett say later, they were running out of the store and he met up with a white man.

MR. JOHNSTONE: I object to that. Move it be stricken, and the jury instructed to disregard that.

COURT: I will sustain your objection.

Q Now when you left the pawn shop, did you have that gun, State's Exhibit No. 2?

A Yes, sir.

Q You knew that belonged to the pawn shop man, did you not?

A Yes, sir.

Q Where did you first go when you left the store?

A Went to my car.

Q You had to go up the street?

A Yes, sir.

Q What was James and Dew doing at this point as you are going up the street?

A We was all going up the street, you know, about together.

Q Where did they go, do you know?

A They went across on the other side of the street, on the side the hamburger stand was on.

Q Which side were you on?

A The side my car was parked on.

Q When you got up there was the car running?

A Yes, sir.

Q Who was in the car?

A Miss Sandra Lockett.

Q What happened when you got in the car? Tell the jury what happened at that point?

A I took the gun out from my pants where I had it, and stuck it up under the armrest; put the car in gear and

pulled off. I asked how to get back to her house. No place we could go. Ain't but a few blocks from there.

Q Did you actually end up in such a place?

A Yes, sir.

Q She told you how to get there?

A Yes, sir.

Q Okay. On the trip from the pawn shop to this place that you ended up, I believe that was her aunt's house?

A Yes, sir.

Q Did you have any conversation with Sandra about what happened in the pawn shop?

A Yes, sir.

Q What did you tell her happened?

A I tell her I went in there, asked the man to let me see the gun; he let me see the gun; I put the two bullets in it and told him it was a holdup. I told him it was a holdup. He snatched the gun; the gun went off; he got hit.

Q What did she say?

A She didn't say nothing.

Q Did she ever handle that gun on the trip from the pawn shop over to her aunt's house?

A Yes, sir.

Q Tell the jury what Sandra did with the gun on that trip over to her aunt's house?

A She took the gun and put it in her pocketbook.

Q When you got to the aunt's house, who went into the aunt's house?

A Me and Miss Sandra Lockett.

Q Where was the gun at this point?

A In her pocketbook.

Q About how long did you stay there at the aunt's house?

A About 15 to 20; half hour at the most.

Q Did you ever say anything to anybody at the aunt's house about what had happened?

A No, sir.

Q Did Sandra?

A No, sir.

Q Did she ever have any conversation with her aunt?

A Yes, sir.

Q Did she talk to her?

A She was talking to her aunt.
Q About what, do you remember?
A I think she was telling her she wanted to fix her hair, wash her hair, something like that.
Q When you left the aunt's house, what kind of car did you leave there in?
A Taxicab.
Q How did the taxicab get there? Who called?
A Miss Sandra Lockett called them.
Q When you got in the taxicab, where did you sit in the taxicab?
A In the back on the passenger side.
Q Where was Sandra at?
A Sitting behind the driver.
Q Now, did she have her purse with her at this point?
A Yes, sir.
Q The gun still in the purse?
A Yes, sir.
Q Did she ever tell the driver where she wanted to go, what the destination was to be?
A Yes, sir.
Q What was that?
A I don't remember what street she told me.
Q Was it to go back to her parents' place?
A Yes, sir.
Q Did she ever give directions to the cab driver as to how to get to that location?
A Yes, sir.
Q Did an Akron police car ever stop you that particular time?
A Yes, sir.
Q About how long were you in the cab, Al, before the police car stopped you?
A We get about three or four blocks from the house.
Q At this time had Sandra moved any closer to you?
A Yes, sir.
Q Where was she seated now?
A In the middle of the seat close to me.
Q Where was the police cruiser at?
A Behind us.
Q What were you doing at this point?

A Looking back at them, the police.

Q Did you say anything to Sandra at this time or she to you?

A Yes, I told her that the police were going to stop us.

Q What did she say?

A They stopped us. She whispered to me that the gun was under the seat.

Q Did you actually see her put the gun underneath the seat?

A No, sir.

Q What were you looking at at that time?

A The police.

Q When the police stopped the taxicab, did they come up to the cab?

A Yes, sir.

Q Did they talk to anybody in the cab?

A Yes, sir.

Q Did Sandra ever say anything to the policeman?

A I think she said, we ain't doing nothing; we ain't got no dope on us, something like that.

Q Did the taxi driver have any conversation with the police officer that you are aware of?

A I don't think so.

Q Now, when you're talking with Sandra just before the police stopped you, were you whispering to her, talking loud, or what?

A Whispered to her.

Q Did the police take you down to the Police Station at that point?

A Yes, sir.

Q Did Sandra Lockett go with you?

A Yes, sir.

Q Do you remember talking to a Detective Sanders there at the Akron Police Department?

A Yes, sir.

Q What did you tell the policeman?

A I asked him what he wanted with me? He tell me I fit a description that somebody had given out that day. I said, description about what? He didn't never tell me about what. Then he took us down to the police headquarters.

Q Did you talk to anybody down there at the police headquarters?

A Yes, sir.

Q Did you lie to those police officers down there at that point?

A Yes, sir.

Q What did you tell them that was a lie?

A He asked me where we was coming from.

Q What did you say?

A I didn't remember what her uncle's name, so she tell him the uncle's name where we were coming from.

Q Did they ask you how long you had been in town?

A Yes, sir.

Q What did you say?

A About two weeks.

Q Where did you tell them you were from?

A Chicago.

Q Was the defendant with you at that time when you were telling the police this?

A Yes, sir.

Q What did she tell the police?

A That I was living with them; I rent a room with her mother.

Q Now, were you released shortly after this point of time?

A Yes, sir.

Q Did you go back to the Lockett house?

A Yes, sir.

Q Did she go with you, the defendant?

A Yes, sir.

Q When you got back to the Lockett house, who was back there?

A Mr. James Lockett, Mr. Nathan Dew.

Q Which house did you go to, the big house or the little house?

A The little house.

Q Did any of the four of you have any discussions, one with the other, about what happened?

A Not right—not then.

Q Did you ever talk about what happened?

A Later on.

Q How much later on?

A About six, seven o'clock that night.

Q Who was present when you were talking about it at six or seven o'clock that night?

A Just us four.

Q Sandra, you, Nathan and James?

A Right.

Q What was being said at this point?

A We didn't say too much. We just say that—I said, the man snatched the gun. We didn't know whether he was living or dead, you know.

Q Do you know if the Akron Police Department, when you were up there at the Police Station, Wednesday afternoon, ever placed a call to Sandra's parents' house?

A Yes, sir.

Q Was Sandra present when they did this?

A Yes, sir.

Q And after the call was placed, you two were released?

A Yes, sir.

Q Now, after you had had this discussion about six or seven o'clock there Wednesday night, what's the next thing that the four of you did?

A Say that again.

Q After all this happened on Wednesday night you are talking about, what's the next thing that you did?

A Well, I lay down on the couch. I try to go to sleep. I couldn't go to sleep.

Q Did you have anything to eat that day?

A Yes, sir.

Q Did you eat after this happened?

A I had food but I couldn't eat.

Q What was Dew doing at this time?

A He just was sitting in there thinking, too.

Q What about James, what was he doing?

A Well, I tried to go to sleep. He was at the little house. He was down at the little house.

Q Where was Sandra at this point?

A Her and somebody went back to pick up my car.

Q Went over to the aunt's house to get the car back?

A Right.

Q Did you ever eventually get back over to Joanne's house?

A Yes, sir.

Q About what time did you get back over there?

A About ten thirty, eleven o'clock that night.

Q How did you get back over there?

A I asked Mr. David Ford to show me the way back over there.

Q Okay. Now, before you went back over to Joanne's house do you know if the police ever came to the Lockett house?

A Yes, sir.

Q About what time was that the police came to the Lockett house?

A About ten o'clock.

Q When they came was James Lockett there, that you remember?

A He was down at the little house; then he come up to the big house after the police got there.

Q Was Dew there?

A Yes, sir.

Q When the police came to the house, which house did they come to?

A The big house.

Q Were you in the big house?

A Yes, sir.

Q When the police came, where were you at?

A Upstairs on the third floor.

Q What area of the third floor?

A After the police come, we ran and hid in the attic.

Q Okay. Was the door ever locked?

A Yes, sir.

Q Who hid in the attic?

A Me and Mr. Dew.

Q You say the door was locked?

A Yes, sir.

Q Was it locked from the inside or from the outside?

A From the outer side.

Q Who locked the door from the outside?

A Miss Sandra Lockett.

Q How long did you stay in the attic there?

A We didn't stay too long because after the police left, somebody come upstairs and let us out.

Q You don't remember who that was?

A No, sir.

Q When you got back over to Joanne's house, did you ever tell her what happened eventually?

A Not then. I told her that I had to go make a phone call.

Q Did you eventually tell her what happened?

A After the police pulled me over, I said, I tell her what happened.

Q The police arrested you that night?

A Yes, sir.

Q About what time was it?

A About twelve o'clock.

Q Now, did you ever tell the police officers late that—would be early Thursday morning what had happened?

A Say that again.

Q Thursday morning, once you had been arrested and you went down to the police station, did you ever tell any of the detectives what had happened?

A Yes, sir.

Q Did you ever tell me what had happened later on that same day?

A Yes, sir.

Q What you told the police officer what happened and what you told me, is that basically what you are telling this jury here today?

A Yes, sir.

Q Except I have asked you more questions here today than what I asked you then, is that right?

A Yes, sir.

Q When you plead guilty to aggravated murder, did the Prosecutor promise you anything?

A No, sir.

Q Did he say he would do anything for you?

A Yes, sir.

Q What did the Prosecutor say he would do for you?

A Drop the aggravated robbery and specifications.

Q And you did plead guilty to aggravated murder?

A Yes, sir.

Q When the Prosecutor told you that he would drop the specifications and the aggravated robbery, did you promise you would do anything for him?

A Yes, sir.

Q What is that?

A Tell the truth.

COURT: Ladies and gentlemen, it's now ten thirty-five. We'll take our morning recess at this time for about ten minutes. Remember the admonitions of the Court about not talking to anybody; don't allow anybody to talk to you. Keep an open mind until all the evidence is submitted to you. Reassemble in the jury room in ten minutes. We'll start immediately thereafter. You are excused. Everybody else remain in the courtroom until the jury is departed.

RECESS

(Proffered)

MR. JOHNSTONE: Let the record show that at the end of the major part of Al Parker's testimony, Counsel for Sandra Lockett, myself and Mr. Bayer, again asked Sandra Lockett if she wished to take the proposition made to her about pleading to aggravated murder without specifications and the dropping of the aggravated robbery charge and the dropping of the forgery case against her. And she again said that she did not wish to take that proposition. Is that correct, Sandra?

DEFENDANT: Yes.

MR. JOHNSTONE: Also let the record show that Sandra Lockett requested us to call in her defense Nathan Earl Dew and James Lockett.

Let the record show that Sandra Lockett said they would tell the truth.

Let the record also show that Mr. Bayer and I told her that James Lockett and Nathan Earl Dew had made a full confession to the Prosecutor and possibly to the police, that there was in fact a conspiracy to rob the deceased Cohen, and that when and if they did testify from the stand that there was no conspiracy, that by the time the Prosecutor had cross-examined them on the basis of their confessions

the State's case would, in our opinion, be greatly bolstered; and that putting such witnesses, i.e., Dew and James Lockett on the stand would be the worst possible thing we could do for her.

Let the record also show that we have advised Sandra Lockett that it would be necessary to get the permission of James Lockett's attorneys to-wit, H. Paul Collins and Joseph Gibson and possibly the two lawyers from Columbus and the permission of Nathan Earl Dew's attorneys, to-wit, Edwin Pierce and Ed Smolk, before we could call either Dew or James Lockett to the stand.

You have been so advised, have you not, Sandra?

DEFENDANT: Yes.

MR. JOHNSTONE: Now again, in spite of all of this and after hearing Al Parker's direct testimony and after reading Al Parker's confession, which we gave you, you are still of the same mind that you do not wish to take the proposition made to you?

DEFENDANT: Right.

MR. BAYER: Max, also add in there, as far as we know the Attorneys have advised their clients, that is, James Lockett and Earl Dew, to take the 5th Amendment; they would not testify.

MR. JOHNSTONE: Let the record show that we have been so advised.

MR. BAYER: By the respective Attorneys for both Dew and James Lockett.

(WHEREUPON, the jury enter the courtroom.)

COURT: You may proceed.

MR. SHOEMAKER: Thank you, Judge.

AL PARKER (resumes the stand)

DIRECT BY MR. SHOEMAKER: (Continued)

Q Al, the last time that you knew anything about that gun was when? Is that when Sandra told you it was underneath the seat of the taxicab?

A Yes, sir.

Q Did you testify in the trial of Nathan Earl Dew?

A No, sir.

Q Did you testify in the trial of James Lockett?
A Yes, sir.
Q Did you tell the truth in that trial?
A Yes, sir.
Q When you took the gun from the pawn shop, did you know that you were stealing the gun at that point?
A No, sir.
Q Did you know the gun belonged to the owner of the pawn shop when you took it?
A Yes, sir.
Q Now, Al, the purpose to go to the pawn shop was to do what? What was the plan when you went to the pawn shop to do what?
A To rob.
Q It hadn't been discussed, the killing?
A No, sir.
Q Okay. That wasn't part of the plan?
A No, sir.
Q Now, the day that you told the Akron police officers what had actually happened, that was early Thursday morning, correct?
A Yes, sir.
Q And the time that you told me what actually happened, was that Thursday afternoon?
A Yes, sir.
COURT: What day are we talking about?
MR. SHOEMAKER: This would be—
COURT: Let him tell us.
Q Do you remember what date it was?
A January 15.
Q All right. The 15th was Wednesday?
A Yes, sir.
Q Okay. You talked to me Thursday?
A January 16th.
Q Now, Al, the discussion that the Prosecutor had with you when he promised to drop the specifications and the aggravated murder, that was some time after all these confessions, is that not a fact?
A Yes, sir.
MR. SHOEMAKER: I have nothing further of this witness at this point.

COURT: You may inquire, Mr. Johnstone.

CROSS EXAMINATION

BY MR. JOHNSTONE:

Q To what Prosecutor were you talking when they told you that they would drop the specifications from the aggravated murder and drop the aggravated robbery charge if you plead guilty to aggravated murder alone?

A I don't understand that? Say that again.

MR. JOHNSTONE: Read it.

COURT: You will just confuse him because you had him dropping aggravated murder and pleading guilty in your question. Rephrase it.

MR. JOHNSTONE: My question was dropping the specifications.

COURT: That's different.

MR. JOHNSTONE: That's what I said. That's why I asked to have the question read.

COURT: Just put another question.

Q To what Prosecutor were you talking when you were told that they would drop the specifications to aggravated murder and the aggravated robbery charge if you plead guilty to aggravated murder?

A I still don't understand that.

COURT: Read it.

(Whereupon, the last question was read by the court reporter.)

A Mr. John Shoemaker and my lawyer.

Q Mr. John Shoemaker, that's this gentleman here?

A Yes, sir.

Q And your lawyer is who?

A Mr. Jim Williams.

Q Where did this conversation take place?

A My lawyer came around and talked to me.

Q Do you know where you were?

A Out there on the bench.

Q Outside this courtroom?

A Yes, sir.

Q What day was that, Mr. Parker?

A I think it was on Monday. I'm not sure, Monday or

Tuesday, the day before my trial.

Q The day before your trial?

A Yes, sir.

Q Your trial was when?

A The 25th.

Q Of what?

A February.

Q Actually you didn't have a trial, did you?

A No, sir.

Q Now, at any time prior to that day had either the police or any of the Prosecutors informed you that they knew the other crimes that you had confessed to or plead guilty to or been proven guilty to after trial?

A No, sir.

Q They did not?

A No, sir.

Q Was there any discussion at any time between any of the police or sheriff's people or the Prosecutor about other crimes that you had committed?

A No, sir.

Q None whatsoever?

A No, sir.

Q Did either the Prosecutor, Mr. John Shoemaker or any other Prosecutor, or your lawyer James Williams, ever tell you that if you confess to aggravated murder with the specifications to aggravated murder dropped and with the aggravated robbery charge dropped that you could not go to the electric chair?

A Say that one again?

MR. JOHNSTONE: May we have it read?

(Whereupon, the last question was read by the court reporter.)

A They didn't drop the aggravated murder. They dropped aggravated robbery.

Q They did drop the specifications?

A Yes, sir.

Q To aggravated murder, correct?

A Yes, sir.

Q Now, were you ever told by anyone that if you plead guilty to aggravated murder without the specifications and without the aggravated robbery charge, that you could not

go to the electric chair?

A Yes, sir.

Q Who told you that?

A My lawyer.

Q Your lawyer, James Williams?

A Yes, sir.

Q Did you also not have a lawyer, Clyde Conn?

A Yes, sir.

Q Was he in on this also?

A Yes, sir.

Q Was he present when you were told that?

A No, sir.

Q Was that mentioned to you by the Prosecutor John Shoemaker or any other Prosecutor?

A No, sir.

Q It was not?

A No, sir.

Q Now in return for that, you were to testify against the other three people, Dew, James Lockett and Sandra Lockett, is that correct?

A I'm supposed to tell the truth.

Q Now let's don't evade or hedge, please.

MR. SHOEMAKER: I'm going to object to that.

COURT: Sustained, Let's not argue with the witness.

Q In return for that, the dropping of those specifications on the aggravated murder charge and the aggravated robbery charge, were you told that the Prosecutor would go along with such a deal if you agreed to turn State's evidence and testify against the other three defendants?

A No, sir. They didn't drop the aggravated murder.

Q That is correct. They did not drop the aggravated murder but they dropped the specifications to the aggravated murder?

A Yes, sir.

Q Do you understand that?

A Yes, sir.

Q And they dropped the aggravated robbery charge?

A Yes, sir.

Q Do you understand that?

A Yes, sir.

Q All right. Now, were you told in return for that that you would be expected to testify?

A Yes, sir.

Q Against Sandra Lockett?

A Yes.

Q James Lockett and Nathan Earl Dew?

A Yes, sir.

Q Who told you that?

A My lawyer.

Q Also, Mr. Shoemaker?

A No, sir.

Q Anyone else from the Prosecutor's Office?

A No, sir.

Q Anyone from the Police?

A No, sir.

Q You do know, do you not, that when these specifications to the aggravated murder charge were dropped and the aggravated robbery charge was dropped, that you could not be sentenced to the electric chair?

A Yes, sir.

COURT: May I just say one thing. Only thing that has to be dropped is the specifications to eliminate that particular issue. Nothing else.

MR. JOHNSTONE: He seems to have trouble understanding.

COURT: You keep throwing in aggravated robbery, which confuses even the Court. That has no bearing whether or not the person is even considered for the capital punishment. The only thing you have to do is drop specifications.

BY MR. JOHNSTONE:

Q Now, Mr. Parker, you do know, do you not, that Nathan Earl Dew and James Lockett were tried on the charges of aggravated murder with specifications?

A Yes, sir.

Q And aggravated robbery?

A Yes, sir.

Q And you testified in the James Lockett case?

A Yes, sir.

Q And you do know that he was convicted of a crime or crimes from which he could be sentenced to the electric

chair?

A Yes, sir.

Q Likewise, you know that Sandra Lockett is also charged with those same crimes and if convicted could be sentenced to the electric chair?

A Yes, sir.

Q So that was the deal you made with the prosecution, is that correct?

A My lawyer told me about it.

Q I say, that was the deal you made?

A Yes, sir.

Q You are the trigger man?

A Yes, sir.

Q I hand you a finger ring which has been marked for identification State's Exhibit 27. Would you take that, please. Have you seen that before?

A Yes, sir.

Q To whom does it belong?

A Mr. Dew.

Q Is that the ring that you were going to take to the pawn shop to hock?

A Yes, sir.

Q That was for the purpose of getting money to go back to New Jersey?

A Yes, sir.

(Whereupon, Attorney James Williams, leaves the courtroom.)

MR. JOHNSTONE: May we approach the Bench

COURT: Certainly.

(Conference with the Court, out of the hearing of the jury and court reporter.)

BY MR. JOHNSTONE:

Q You have been convicted or plead guilty to various felonies, have you not?

A Yes, sir.

Q One of them was a breaking and entering and larceny charge, where?

A In New Jersey.

Q At Newark, New Jersey?

A Yes, sir.

Q When?

A I think it was in 1972. I think. I'm not sure.
Q Did you plead guilty or were you found guilty?
A I plead guilty.
Q Were you given a penitentiary sentence?
A Yes, sir.
Q Where?
A In New Jersey.
Q How long did you serve?
MR. RUDGERS: Object to this line of questioning, Your Honor.
COURT: Sustained. Do you want to talk to me about it?
MR. JOHNSTONE: Yes, I do.
COURT: You may approach the Bench.
(Conference with the Court, out of the hearing of the jury and court reporter.)
Q What other felony did you plead guilty to or were you convicted of besides the one you just told us about?
A Say that again?
Q What other felony did you plead guilty to or were you convicted of besides the one you just told us about?
A I had one where I received 89 coats.
Q Where you received 89 what?
A Coats.
COURT: Receiving stolen property.
Q Receiving stolen property?
A Yes, sir.
Q Where was that?
A In Newark, New Jersey.
Q Did you serve time for that one?
A No, sir.
Q Any others?
A No, sir.
Q None at all?
A No, sir.
Q Was that under the name of Charlie Green?
A Yes, sir.
Q Is that actually your name or is it Al Parker?
A Charlie Green.
Q When did you start using the name of Al Parker?
A About a year ago.
Q Why did you start using the name of Al Parker?

A Because I jumped bond. I didn't want to get caught. If I go under the name of Charlie Green, I'd get shaked down the day they found out who I was.

Q You jumped bond?

A Yes, sir.

Q Where?

A New Jersey.

Q What city?

A Newark.

Q What was the bond for? What crime or what charge?

A The same one you just asked me about, the B & E, the one I plead guilty to and the receiving stolen property.

Q Were you ever apprehended on that?

A Say that again.

Q Were you ever picked up by the police after you jumped bond?

A No, sir.

MR. JOHNSTONE: That's all.

REDIRECT EXAMINATION

BY MR. SHOEMAKER:

Q Al, did you testify at the trial of Nathan Dew?

A No, sir.

Q Do you know that he also was convicted of aggravated murder with the specifications?

A Yes, sir.

Q It was Sandra Lockett's idea not to pawn that ring, isn't that correct?

MR. JOHNSTONE: Object to that. It's repetitious.

COURT: Yes. I'm going to sustain the objection.

MR. SHOEMAKER: Nothing further.

COURT: You may step down.

(Witness excused)

JOANNE BAXTER

was duly sworn according to law, and testified as follows:

DIRECT EXAMINATION

BY MR. SHOEMAKER:

Q Joanne, do you want to give your name in full, please?

A Joanne Baxter.

Q You live in Akron?
A Yes.
Q How old are you?
A Twenty-one.
Q Do you know a man by the name of Al Parker?
A Yes.
Q Do you know a man by the name of James Lockett?
A Yes.
Q Do you know a man by the name of Nathan Earl Dew?
A Yes.
Q Do you know a girl by the name of Sandra Lockett?
A Yes.
Q Is Sandra Lockett in this courtroom?
A Yes.
Q Tell the jury where she's at?
A Right there. (Indicating.)
Q Let the record reflect the witness has indicated the defendant.
MR. JOHNSTONE: I didn't see it.
MR. SHOEMAKER: She pointed.
A Right there in the blue.
Q How long have you known the defendant, Joanne Baxter?
A Sandra Lockett?
Q I'm sorry, Sandra Lockett. I'm sorry.
A For about a month maybe.
Q Keep your voice up.
A For about a month.
Q Now, did you have occasion to go to New York state with Sandra?
A Yes.
Q Whose car did you and Sandra go to New York state in?
A Her 1973 Monte Carlo.
Q Who went with you besides the two of you?
A Her uncle, David, and her brother, James.
Q Now, when you got to New York were you also in the New Jersey area?
A Yes.
Q Did you ever meet Nathan Dew in that area?

A Yes.
Q Keep your voice up?
A Yes.
Q Did you ever meet James Lockett in that area on this same trip?
A I met James here.
Q Okay. And he went with you to New Jersey, is that right?
A James?
Q Yes?
A Yes.
Q You met Al Parker up there in New Jersey?
A Yes.
Q Did the four of you spend the weekend in the New York-New Jersey area?
A Yes.
Q When did you come back to Akron, approximately?
A Tuesday.
Q Tuesday? How many cars came back from New York?
A Two.
Q Whose cars were those, please?
A Sandra's and Al Parker's.
Q Who came back to the Akron area?
A James Lockett, Earl Dew, Al Parker, David and Sandra and myself.
Q About what time did you get back to Akron on Tuesday?
A Four thirty that evening.
Q That would have been around January 14, 1975?
A Yes.
Q Where is the first house you went to when you came back to Akron?
A Sandra's sister's house.
Q That's over on North Street on Tarbell?
A Tarbell.
Q Sandra's parents have two houses right there together?
A Yes.
Q One is on Tarbell, one is on North?
A Right.

Q They are right back-to-back?
A Right.
Q Did you and Al Parker and Sandra ever leave that house about that time and go anywhere—referring now to Tuesday in the afternoon when you first got back here?
A You mean when we first got back?
Q Yes, after you had been there a while, did you ever have occasion to leave?
A Yes, but it was me, Sandra and Earl.
Q Where did the four of you go?
A First we went to the Methadone Clinic.
Q Who was going to the Methadone Clinic?
A Sandra.
Q Joanne, when you were going to the Methadone Clinic, whose car were you in?
A Al's.
Q Was Al with you?
A He was driving.
Q He was driving?
A (Nods head.)
Q Was Sandra with you?
A Yes.
Q Was Nathan Dew with you?
A Yes.
Q Was there any discussion on the way to the Methadone Clinic about robbing any place?
A Yes.
Q Okay. Who said what at that point on the way to the Methadone Clinic?
A Sandra just said that she knowed places we could knock off.
Q Did she give any names of any places at that point?
A (Nods head.)
Q Tell the jury.
A Yes.
Q What was the name of the place?
A Easter's grocery on Howard Street.
Q That's on North Howard?
A Yes.
Q After you left the Methadone Clinic, where did the four of you go to at that point next?

A Turner Funeral Home.

Q What was the reason to go, Joanne, to the Turner Funeral Home?

A We just got back from New York. I have an apartment. My brother was staying in my apartment while I was away, so I had to go up there to get my house keys to get in my house.

Q Did you get the keys there at the Funeral Home?

A Yes.

Q When you came out of the funeral home, where is the next place that the four of you went in Al's car?

A Sandra was showing Al how to get to Easter's grocery from where we were at, at the funeral home.

Q That's the one you just told the jury about on North Howard?

A Yes.

Q Did you ever go by that business, Easter's grocery store?

A Yes, we went straight to the store.

Q Did you ever slow down or turn around or anything like that in that area?

A Yes. We was coming down Howard Street hill and Al turned. He turned the car around so he could see—

Q Who told him to turn the car around at that point?

A Sandra told him where the store was.

Q What did Sandra say? Anything at this point?

A She just said that if you get him—like you have to get him fast because he was a big dude and that he carried a 45 on his side, and that if you went in the store to get him that you had to get him real fast, because his wife or somebody stayed upstairs and they could, you know, enter the store from behind the counter.

Q Now, did you ever have occasion after being at the area of Easter's grocery store to go to your own apartment?

A Yeah.

Q Okay. How long did you stay there at that point?

A About 15 minutes.

Q And did you eventually end up back at Sandra's parents' house?

A Yes.

Q Before you got back to Sandra's parents' house, did you stop anywhere else?

A Yes, on Copley Road.

Q Okay. Did you do anything there on Copley Road?

A Yeah.

Q What did you do?

A Went in and—into a house to get a nickel—five dollar bag of reefers, marijuana.

MR. JOHNSTONE: Get what? Get what?

A Pardon?

MR. JOHNSTONE: To get what?

A To get a five dollar bag of marijuana.

Q Do you know that possession of marijuana is against the law?

A Yes.

Q Okay. Did you eventually Tuesday night end up back over at your apartment?

A Did I eventually end up at my apartment?

Q Yes?

A Yes.

Q Did Al Parker eventually end up Tuesday night over at your apartment later on?

A Yes.

Q Did you ever have occasion to see Sandra Lockett Wednesday morning, January 15?

A Yes.

Q About what time did you see Sandra Lockett on the 15th, Joanne?

A About noon.

Q Did you have occasion to see James Lockett about the same time?

A Sandra took Earl and James, came over to the house at the same time to pick up Al.

Q How many bedrooms does your apartment have?

A Two.

Q Did these four people you just mentioned, Sandra, James, Al, and Nathan Dew, ever get together in any one of your bedrooms that morning?

A Yes.

Q Were you in there at that point?

A No.

Q Do you know what went on in there?

MR. JOHNSTONE: Object if she wasn't there.

A No.

Q Was anyone else there at your house that morning besides the people you just mentioned?

A My cousin, Leo, has stayed over at my house, Leo Wood.

Q How long did these four people, James, Al, Nathan, and Sandra, stay there after they were in the bedroom?

A Wasn't any longer—in the bedroom?

Q In the house?

A Wasn't any longer than about ten minutes.

Q They eventually leave?

A Yes.

Q That's all four of them?

A My cousin, Leo, he asked them to drop him off down—he stayed on Snyder. He asked them to drop him off on Snyder, so there was five of them.

Q That's the last you saw those people for a while, is that correct?

A Yes.

Q Okay. Did you later on, late Wednesday night ever have occasion to see Al Parker again?

A Yes.

Q About what time was that that you saw him next?

A About 11:25 or 11:30.

Q Did you have conversations with Al Parker when you saw him at that point?

A Yes.

Q Did he tell you what had happened?

A Yes.

Q Do you want to tell the jury, please, whose idea it was for the four of you to go to New York and New Jersey—you and Sandra, David Ford and James?

A Sandra asked me to ride up there with her to take her brother up there. She said that he was going up there to get his clothes and that he was coming back to Akron.

Q That's James?

A Yes.

Q Okay.

MR. SHOEMAKER: I have nothing further of this wit-

ness at this point.

COURT: Mr. Johnstone?

CROSS EXAMINATION BY MR. JOHNSTONE:

Q Are you some relation to Sandra Lockett?

A No.

Q Did you testify that you had known her about a month?

A Yeah.

Q What?

A Yes.

Q When did you first become acquainted with Sandra?

A I don't remember. I don't remember the exact date or day or what have you. I don't remember that.

Q Where did you live?

A On Callis Oval, Channelwood, right off Thornton.

Q Where did you become acquainted with Sandra Lockett?

A In my house. My cousin, Leo, introduced me.

Q Who is Leo?

A My cousin, Leo Woods.

Q Leo Woods?

A Uh huh.

Q Did he stay there with you?

A Sometimes.

Q Who is this David you spoke of?

COURT: Will you both keep your voices up, Mr. Johnstone?

Q Who is this David you spoke of?

A David is Sandra's uncle.

Q What is his last name?

A Ford, if I'm not mistaken.

Q David Ford?

A I think. I'm not sure.

Q How old a man is he?

A About 17 or 18.

Q On the way back from the New Jersey area, where you were, did anything happen on the road that you can recall of any significance?

A What do you mean?

Q Did you come back the same day? Did you get in Akron the same day you started?

A You mean did we just go up there, turn around and come right back?

Q No. When did you leave New York and New Jersey, whatever it was?

A We left Monday night.

Q About what hour?

A I guess it was around ten. I don't know.

Q Around ten o'clock at night. Is that what you mean?

A (Nods head.)

Q What?

A Yes.

Q In whose car were you riding?

A Al's.

Q And how far did you get that night?

A You mean how many miles?

Q Yes.

A I don't remember. We was right outside of Youngstown. We wasn't too far from Youngstown, if that's what you mean, and we stopped.

Q Were you still in Pennsylvania?

A That was right outside of Youngstown, yes.

Q All right. You stayed overnight there?

A Yes.

Q Where?

A At the Holiday Inn.

Q With whom did you stay?

A With Al, Sandra and Earl. We stayed in the same room; and David and James stayed in the same room.

Q Then you came to Akron the next morning or when?

A That morning.

Q That morning?

A Uh hun.

Q When did you arrive in Akron?

A Four thirty that afternoon.

Q In the afternoon?

A (Nods head.)

Q You didn't go directly to your house?

A I couldn't get in.

Q Do you know where you stayed in the New York vicinity?

A We didn't stay in New York.

Q Where did you stay?

A We stayed in Jersey City.

Q Jersey City?

A Right.

Q Where?

A At Sandra's stepsister's house.

Q Who was that?

A One's name is Mary. I forget the rest of them name.

Q I'm sorry. I didn't get a bit of that?

A I said one of them name is Mary. I don't know the last name and I forget the rest of them name.

Q With whom did you stay there?

A With Sandra's stepsister.

Q Who else was in that house when you stayed there?

A Their mother.

Q Her mother?

A Whose mother? I'm talking about Sandra's stepsister's mother stayed there. It was her home.

Q Her home, all right. Did you and Al Parker go various places while you were there?

A You mean did we go out and stuff?

Q Yes?

A Yeah.

Q Do you know where you went?

A To some Bars and we went to New York.

Q All together how long were you there?

A From that Friday until that Monday night.

Q When you got back to Akron did Al Parker stay with you over at your apartment overnight?

A Yes.

Q That was what night?

A Tuesday night.

Q How long was he at that apartment of yours on Callis?

A Well, he came like—they dropped me off and he came about eleven. He came over about eleven and he stayed until about noon on Wednesday.

Q Until about noon that Wednesday?

A Right. Sandra and James came to pick him up.
Q Who?
A Sandra, James and Earl, they came to pick him up.
Q The three of them?
A Right.
Q Where is this Methadone Clinic you're talking about?
A It's right off of Market Street. I don't know the name of the street, but it's right—it's about a street or two streets from High Street, going up Market.
Q Going up? You mean going east on Market?
A Yes, going east.
Q What's the purpose of that place?
A Sandra going there? I don't know.
Q You don't know anything about it?
A No.
Q Have you ever been on drugs?
A No.
Q Do you know that Sandra has been?
A Yeah.
Q Do you know why she took Methadone?
A She what?
Q Do you know why she took Methadone?
A Well, I don't know why. I mean I can just about guess why, but I don't—.
Q She was trying to get off of heroin, wasn't she?
A Yes.
Q You said something about a pack of marijuana?
A Yes.
Q How did you identify that?
A You asked me what did I say about the marijuana?
Q Yes.
A I said I went and purchased a five dollar bag of marijuana.
Q Five dollar bag?
A Five dollars.
Q That's what I didn't catch. For whom was that?
A It was for—I wanted it, but it was for all of us.
Q Did you all smoke it?
A Yeah.
Q All four of you?
A Yeah.

Q Are you a regular user of marijuana?
A No; occasionally.
Q How about Sandra?
A No. She don't smoke a lot of it. She don't smoke a lot of marijuana.
Q How about James Lockett and the rest of them?
A All of us smoke reefers.
Q Smoke reefers? Is that what you mean?
A Marijuana.
Q Where is this place on Copley that you stopped?
A I would rather not say.
Q I expect you would rather not say.
MR. SHOEMAKER: Object to arguing with thewitness.
Q Where is it?
COURT: Sustained. She doesn't have to say.
MR. JOHNSTONE: She doesn't have to say?
COURT: (Shaking head) For the obvious reason, Mr. Johnstone.
Q Had you been there before?
A Had I been there before?
Q Yes?
A Yes.
MR. JOHNSTONE: That's all.
MR. SHOEMAKER: Nothing further.
COURT: You may step down.
(Witness excused)

* * * * * *

COURT: Your next witness?
MR. RUDGERS: The State would call Lowell Hayes.
Whereupon,

LOWELL HAYES

was duly sworn according to law, and testified as follows:

DIRECT EXAMINATION

BY MR. RUDGERS:
Q For the record and the jury, Mr. Hayes, would you state your full name?
A Lowell Hayes.
Q And do you live in the city of Akron, Mr. Hayes?
A Yes.

Q How long have you lived in the Akron area?
A Fifteen years.
Q Where are you presently employed, Mr. Hayes?
A Yellow Cab Company.
Q What do you do for the Yellow Cab Company?
A I'm a driver.
Q How long have you worked for the Yellow Cab Company?
A Three years.
Q Has that been in the Akron area the whole time?
A Yes, sir.
Q Call your attention to January 15, 1975, and ask you if you were working as a cab driver for Yellow Cab on that day?
A Yes, sir.
Q What shift were you to work that day?
A Eight in the morning until seven at night.
Q And what cab were you driving that day?
A Cab 52.
Q Okay. Is that Yellow Cab 52 or G.I. Cab?
A Yellow Cab.
Q I'd like to call your attention to around 1:30 or 1:36 in the afternoon of January 15, 1975, and ask you if you were on the road in your cab at that time?
A Yes.
Q Did you receive a call from the Dispatcher's office?
A Yes, sir.
Q Okay, could you tell me what that call was?
A The call was to go to 168 Nieman.
Q To pick up a fare there?
A Yes, sir.
Q Where is 168 Nieman Street located, Mr. Hayes?
A Around City Hospital.
Q Okay. And you proceeded, I take it, to 168 Nieman Street?
A Yes.
Q What happened when you got there?
A Two people got in my cab.
Q Okay. Who were these people? Man and woman?
A Man and woman, yes.
Q Now, the woman that got in your cab at that time, is

she in the courtroom today?

A Yes, sir.

Q Could you point her out and describe to the jury what she's wearing?

A This girl right here in the blue.

Q Okay. I would ask that the record reflect that the witness has identified the defendant in this case. Now, when the man and the woman got in your cab, Mr. Hayes, where did the man sit?

A On the passenger side next to the door.

Q Would this be in the front or back seat?

A Back seat.

Q So if this is a rough drawing of your cab, assume this is the front of it—that's where you were seated; this being the back seat here. He would have been over here?

A Yes.

Q Where was the female seated?

A In the middle.

Q Right about here?

A Yes.

Q That is the defendant Sandra Lockett?

A Yes.

Q Now, when they got in your cab, what was said?

A To go to Tarbell Street.

Q Who told you to go to Tarbell Street?

A The girl.

Q Where is Tarbell Street, Mr. Hayes?

A It's off of West North Street.

Q In the city of Akron, is that correct?

A Yes.

Q After she told you to go to Tarbell Street, did she say anything else?

A Did I say anything?

Q Did she say anything?

A I started to go one way and she told me to go this other way.

Q From Nieman Street around City Hospital to Tarbell, what is the normal route you, as a cab driver for Yellow Cab, would have taken?

MR. JOHNSTONE: Object.

COURT: He may answer. Overruled.

Q If we're on Nieman Street—
A Yes sir.
Q —where would you have gone from Nieman Street?
A Up Upson.
Q Okay.
A To Arch.
Q Okay.
A Perkins, and Howard and North.
COURT: And make a right?
A Yes.
Q Then you turn off of North Street onto Tarbell?
A Right.
Q This would be the normal route, is that correct?
A Yes, sir.
Q What instructions did Sandra Lockett give you as to the route you were to take?
A Down Upson to Arlington.
Q And from Arlington to where?
A East North Street.
Q And then up North Street, I take it, again to Tarbell, is that right?
A Right.
Q Mr. Hayes, did you follow the instructions of the defendant?
A Yes.
Q Is that normal policy for a cab driver—
MR. JOHNSTONE: Object to that.
COURT: Sustained.
MR. JOHNSTONE: What in the world is the difference?
Q —to follow the directions? How did you proceed? Did you reach Arlington Street?
A Yes, sir.
Q What happened when you reached Arlington Street, Mr. Hayes?
A I made a left-hand turn.
Q Okay. What happened after you made the left-hand turn onto Arlington?
A I seen a cruiser with its lights on and I pulled over.
Q Okay. And what happened after you pulled over upon seeing the cruiser with its lights on?
A One Officer come up and asked me where I picked up

the fare.

Q What happened after that?

A He had the man to get out of the cab.

Q After the man got out of the cab, what happened then?

A They searched him.

Q Okay. And after they had searched him, where did they take him?

A They put him in the cruiser.

Q Who went back to the cruiser at that time?

A The Officers.

Q Both Officers?

A The one Officer and then the other one followed.

Q So at one point in time at least both Officers and the male passenger were back at the police car, is that correct?

A Right.

Q And who was in the cab with you at that time?

A The girl.

Q Okay. Where was she seated at that time?

A Right behind me.

Q So after the police came, her seating was moved over to more behind you, is that correct?

A Right.

Q What did she do if you recall at that time?

A Well, one of the Officers asked for some identification and she was going through her pocketbook.

Q She went through her pocketbook at that time?

A Yes.

Q How were you able to observe that?

A In my mirror.

Q What happened after that?

A After that, the Officer come up and said that they were going to take them down for questioning.

Q They were going to take the man down for questioning?

A Yes.

Q What else happened? What else did the Officers say?

A They asked the lady to go with them, that the man wanted her to go with him.

Q And did she go?

A Yeah.

Q What did you do after they both went with the police officers in the cruiser?

A I went straight to the Cab Company.

Q About what time would that have been?

A About 2:00, 2:30.

Q What did you do upon getting back to the Cab Company?

A I checked my cab in.

Q You checked your cab in? Does that mean you left work at that time?

A Huh?

Q You left work at that time, 2:30?

A Yes.

Q Why was that?

A Well, one Officer told me there's a couple more people on the lookout for, and I didn't want no part of it.

Q Well, were you nervous, upset?

A Yeah, I was nervous.

Q What made you upset?

A Well, wasn't too long before that a cab driver was killed.

Q Okay. Just a couple more things, Mr. Hayes. You said this would be the normal route to get from Nieman to Tarbell; this would be the route that you were going to take before you were stopped by the police on Arlington Street, is that correct?

A Right.

Q Are you familiar with 42 E. Market Street?

A Yes.

Q Syd's Market Loan?

A Yes, sir.

Q Which route, the normal route or the route the defendant told you to take, which of those two routes would put you closer to Syd's Market Loan?

A The normal.

Q This route would have put you closer to Syd's Market Loan had you taken it from Nieman Street to Tarbell, is that correct?

A Right.

Q How much would this route have cost approximately, had you taken the normal route?

A About $1.75.

Q How much would this one have cost?

A Around $2.25.

Q The police came up to the car—the cab, excuse me, when they first approached the cab did the defendant say anything at that time?

A She said, we haven't got any dope.

MR. SHOEMAKER: That's all I have, Your Honor.

COURT: You may inquire.

MR. JOHNSTONE: No cross examination.

COURT: You may step down. Thank you.

(Witness excused)

* * * * * *

COURT: Call your next witness?

MR. RUDGERS: The State would call Bill Berry.

Whereupon,

BILLY RAY BERRY

was duly sworn according to law, and testified as follows:

DIRECT EXAMINATION .

BY MR. RUDGERS:

Q Mr. Berry, would you state your full name, please?

A Billy Ray Berry.

Q Where do you reside, Mr. Berry?

A 4900 Akron-Cleveland Road.

Q How long have you lived in the Akron, Summit County area?

A Off and on for about 38 years.

Q Are you presently employed, sir?

A No, sir.

Q Why is that?

A I'm laid off.

Q Calling your attention to January 15, 1975, Mr. Berry, were you employed at that time?

A Yes, sir.

Q Where were you employed?

A Yellow Cab Company.

Q What were you employed as at the Yellow Cab Company?

A Driver.

Q On January 15, 1975, did you work that day?
A Yes, sir, I did.
Q What time were you scheduled to come in to work?
A From 3:30 until 2:00 o'clock.
Q 3:30 in the afternoon until 2:00 in the morning?
A Yes, sir.
Q What time did you get to work?
A About 2:30.
Q Now, did you have a regular cab assigned to you?
A No, sir, I didn't.
Q Okay. On January 15, 1975, what cab were you assigned?
A Cab 52.
Q Was that Yellow Cab 52?
A Yes, sir.
Q And about 2:30 on January 15, 1975 did you take your dispatcher sheets, your reports and whatever else you use in the process of driving cab, to Cab 52?
A Yes, sir.
Q What was your purpose for doing that?
A I was fixing to leave a little early, because I work on commission.
Q What did you do when you got to the Yellow Cab 52?
A I laid my sheets in the front seat, opened the back of it to clean the cab out. I picked up some—I opened the door from the driver's side on the back and picked up some cigarette butts. I happened to glance down to my left and I seen a barrel sticking out and, of course, I forgot about the cigarette butts and pulled out the pistol.
Q You pulled out a pistol, you say?
A Yes, sir.
Q Where was that pistol located in the cab?
A Under the driver's seat in the back.
Q If this were just a rough scaled drawing of the cab, this being the driver's side, this the back seat, are you saying it was in this area here? (Indicating)
A Yes, sir.
Q All right. You pulled that pistol out. Did you have a chance to look at it?
A Glance at it, yes, sir.
Q I'm going to hand you what has been marked as

State's Exhibit No. 2 and ask you to look that over?

A (Nods head.)

Q Can you identify that, sir?

A It looks like the gun, sir.

Q Is it the same kind, quality, character as the gun you saw on January 15, 1975 under the driver's seat?

A It looks like the gun I saw.

Q What did you do with the gun, Mr. Berry, after you took it out from underneath the driver's seat?

A I started toward the office to turn it in and another cab driver was heading toward the office and I handed it to him.

MR. RUDGERS: Nothing further.

CROSS EXAMINATION

BY MR. JOHNSTONE:

Q Mr. Berry, what make of automobile was Yellow Cab 52?

A Toronado (sic) I believe, sir.

Q Ford?

A I think so.

Q Is it not a fact that someone who is sitting on the right side of the back seat, that is looking forward, the right side, could have reached over and put that gun under the driver's seat?

A Yes, sir.

MR. JOHNSTONE: That's all.

JAMES LOCKETT

was duly sworn according to law, and testified as follows:

DIRECT EXAMINATION

BY MR. BAYER:

Q Would you please state your full name?

A James Lockett.

Q Where are you presently staying?

A 53 E Center Street.

Q What is your relation to Sandra?

A She's my sister.

Q Okay. Jim, going back to January 15, now the

weekend prior to that, did you take a trip with Sandra?

MR. COLLINS: Your Honor—

A Taking my lawyer—

MR. COLLINS: Your Honor, at this point, in the best interests of my client solely, I am advising him to refuse to answer any further question on the ground that it may tend to incriminate him.

COURT: Mr. Lockett, the decision is yours?

A That's correct.

MR. BAYER: What is correct?

A I refuse to answer on the ground it might tend to incriminate me.

COURT: He has a perfect right to do that.

MR. BAYER: I have no further questions. You refuse to answer on advice of Counsel. No further questions.

COURT: You may step down.

(Witness excused)

* * * * * *

MR BAYER: Your Honor, the next witness, I feel Mr. Max Johnstone wanted to call was Sandra. I would ask to be recessed until Max gets here. He wanted to examine her.

COURT: Take five minutes. Go get him.

RECESS

COURT: Before you start, Mr. Johnstone, Ladies and Gentlemen of the Jury, James Lockett was called in this particular case. He has taken the 5th Amendment. You are not to consider that for any purpose in this particular case. You will consider that particular phase of this proceedings as though he had never even been called and that you had never even seen him on the stand. There's no inferences whatsoever as to what he would or would not have testified. It's as though he had never appeared.

MR. JOHNSTONE: May we approach the Bench, please?

(Conference with the Court, out of the hearing of the jury and court reporter.)

(Conference—Defense Counsel with Defendant and her Mother.)

COURT: Ladies and Gentlemen of the Jury, would you kindly just step into the jury room and stay within the jury room, and we will call you in a few minutes.

(Whereupon, the jury leave the courtroom.)

MRS. LOCKETT: (from the back of the courtroom) Mr. Barbuto?

COURT: Don't say anything. Don't say a word.

MRS. LOCKETT: Okay.

COURT: For the record, some remarks were made to me at the Side Bar and I want all of them repeated into the record so that the record reflects what the conversation was. And Mrs. Lockett—I am referring to the mother—it's Mrs. Lockett?

MRS. LOCKETT: Yes.

COURT: You may say what you have to say into the record so it will appear there.

MRS. LOCKETT: You want me to come up there and say it?

COURT: At the proper time you can come forward, yes, and you can hear what's going on. This is in the record.

Mr. Johnstone asked to speak to the Court. Mr. Johnstone, would you repeat for the record what you told the Court at the Side Bar?

MR. JOHNSTONE: If your Honor please, for the record, I will say that I have requested permission to come up to talk to the Judge along with Council for the State. I told them that we had been advised that Sandra Lockett did not wish to take the stand; and that was when I requested permission to talk to Sandra Lockett.

And I wish the record to reflect the fact that Deputy Helen Pikar brought Sandra Lockett into the jury room, where Mr. Bayer and I talked to her, at which time we asked her if she wished to take the stand. She said she did, but that her mother did not want her to. I asked Sandra Lockett at that time if she wanted to again talk to her mother. I told her that I would step out. She said she did want to talk to her mother, but that she wanted me to

remain, which I did.

We had a conversation among the four of us in the presence of the Deputy. The four of us being Mr. Bayer, Mrs. Lockett, Sandra Lockett and myself.

At that time Mrs. Lockett, for some reason said she did not want Sandra Lockett to take the stand. If the Court wants to inquire what reasons she gave, it's perfectly all right with me.

COURT: No, I don't. That's not my concern nor my business.

MR. JOHNSTONE: Whereupon, I told Sandra Lockett if she did not take the stand, there would be no defense presented other than that which we got from cross examination of the State's witnesses; and that is the way the matter stands now. It apparently is that Sandra Lockett does not wish to testify in this case.

COURT: Now, is there something you want to say? I'm referring to Sandra Lockett's mother. Is there something you wish to say?

MRS. LOCKETT: Yes, Mr. Barbuto.

COURT: Go ahead.

MRS. LOCKETT: What I want to tell the Court is that when Sandra and them first got in this trouble—

COURT: I don't want to hear the facts.

MRS. LOCKETT: I got Sandra legal Counsel. I got two for James and two for Sandra, and then we brought them here. Then they knew that they couldn't take the first two seats, you know; but then the Judge told me over in the Jail House, he said any time that I want to get legal Counsel—

COURT: Who told you?

MRS. LOCKETT: When, you know, when they taken them through over there, over there where the Detectives part is, over in the courtroom over there. See, they said that Judge Reece, if I'm not mistaken, had appointed State lawyers for the children. Well, they said whenever I could afford lawyers that I could get them. All right. When I got these people that come here for James Lockett. All right. I got Sandra two—Sandra two—Mr. Simmons and I think Mr. Schweickart, and they said they called you. So then they said wasn't any use in coming here if they couldn't

take the two front chairs. See, I was hiring lawyers for her. See, I hired lawyers for her. Then they said they talked with you. They talked to the Prosecutor. They talked to everybody, and they said that you all wouldn't allow them to come and take the two front chairs to defend my children. See. They say what I didn't have. They say I didn't have no money, but then they didn't know what I had. All they said, you ain't got this, you ain't got that. They never gave me a chance with my children. Nobody gave me a chance with my children. See. All they tell me what you don't have. They make such to-do downtown in seeing what I don't have. They don't know what me and my husband got. I went and paid for these people to defend my children. See. I'm serious about my children. I ain't playing. I ain't sitting back just looking.

COURT: There's no question about that. Are you through?

MR. LOCKETT: Yeah.

COURT: Since that particular point has been raised about the Attorney, let the record reflect that Monday afternoon the Court received a phone call from an Attorney by the name of Jerry Simmons, who said he was an Attorney in Columbus, Ohio and wanted to know when the trial was going forward. And I told him the trial was going forward the following morning, Tuesday morning. He then told me that he had been contacted but he did not know whether or not he was representing Sandra Lockett and that he wanted to talk to Mr. Johnstone or his present lawyers. I then informed him that I would notify Mr. Johnstone and also informed him to contact Mr. Johnstone and resolve the matter because the case was going forward that following morning. I have not heard from him.

MRS. LOCKETT: I have.

COURT: You said your piece.

MRS. LOCKETT: Okay.

COURT: I have not heard from him. No one has contacted this Court other than that brief conversation over the phone which I was informed that maybe he represented Sandra and maybe he did not, but that he would conclude his conversations with Mr. Johnstone.

That's as far as this Court knows about hiring any lawyer

in this particular case. This is the first time I have been informed by Mrs. Lockett, Sandra Lockett's mother, that she has Counsel.

The State has already presented its case in chief and we had taken a few minutes recess so that Mr. Johnstone could talk to the defendant, Sandra Lockett, and determine whether or not she would take the stand. That is in the record.

Is there anything else you want to say, Mrs. Lockett?

MRS. LOCKETT: Only thing, I still say that I still can get legal Counsel for Sandra. I still say that.

COURT: They are not here.

MRS. LOCKETT: No, sir. They are not here.

COURT: Judge Reed appointed—Judge Reed appointed—

MRS. LOCKETT: Yes.

COURT: —Mr. Johnstone and Mr. Bayer, who are eminently qualified.

MRS. LOCKETT: Uh huh.

COURT: —Attorneys and they have been on this case from the very inception and the Court has no other Attorney of record, nor has the Court been apprised, other than what you have just told me.

We are going forward with the case, Mrs. Lockett.

MRS. LOCKETT: Okay.

MR. LOCKETT: Thank you.

COURT: Get the jury. When you hired the other two lawyers, Gary Schweickart and Mr. Workman, they came to the Court the Friday before the trial and they told the Court that they were additional lawyers in the case, and I said, fine, you may appear and you may cross examine; you may do everything in your power to represent James Lockett. Now, what transpired between the four lawyers, I do not know; but this Court gave them full privileges, so the record will reflect, and I want you to type it up and insert in James Lockett. This will be verified by the two Attorneys, Mr. Workman and Mr. Schweickart. I personally allowed them even to argue the case. They had rank. They are the only two I know about.

As far as Mr. Simmons is concerned, I am repeating to you what he told me and what I told him.

MRS. LOCKETT: That's okay.

COURT: If you had a conversation with Mr. Simmons, put it in the record and Mrs. Lockett should know. She's under the understanding they are supposed to be here.

MR. JOHNSTONE: Let the record show that after three abortive phone calls to my office and to Mr. Simmons' office in Columbus, on the fourth attempt Mr. Simmons and I talked over the telephone.

COURT: What day was this?

MR. BAYER: Monday afternoon.

MR. JOHNSTONE: This was Monday afternoon, March 31, 1975. At that time, among other things, Mr. Simmons asked if the case could be postponed and I said "The Judge will not postpone it." Mr. Simmons asked me if he could be of any assistance? I said, "I do not know." Mr. Simmons said he did not know whether he was engaged by the parents of Sandra Lockett or not, but that if he were we would hear from him again. I told Mr. Simmons that he was welcome to come up here to this trial if he wished to do so, and that we would confer as might be necessary; but I said I wanted him to distinctly understand that I was running the Defense. He said, "I can understand that." And he said, "You probably will not hear from me again."

The fact is that I have not heard from him since that phone call.

COURT: All right. Let the record also reflect that Gary Schweickart told me that he could not represent Sandra and James Lockett because there was a conflict of interest. He could not represent both. He specifically told me that. I don't know what he told Mrs. Lockett.

MRS. LOCKETT: He told me, too. That's why we asked for the other two.

COURT: We're in accord that's what he said?

MRS. LOCKETT: Wouldn't come together, you know, where we could talk to the other, all of us.

COURT: All right.

There has been a request here for a co-defendant, as I understand it. Nathan Earl Dew has been requested to appear, is that correct?

MR. JOHNSTONE: That is correct.

COURT: Do you still wish him to appear in open court?

MR. JOHNSTONE: Upon the demand of our client, Sandra Lockett, the answer is yes, we do.

COURT: Then let's get the jury in.

MR. JOHNSTONE: I think probably Mr. Pierce and Mr. Dew have not finished their conference.

COURT: I'm sorry. See if they are available. If they are, get the jury in.

(Whereupon, the jury enter the courtroom.)

COURT: Call your next witness?

MR. BAYER: Earl Dew, Your Honor.

Whereupon,

NATHAN EARL DEW

was duly sworn according to law, and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSTONE:

Q Will you give us your name, please?

A Nathan Earl Dew.

Q Where are you presently living?

A County Jail right now.

Q Were you one of the defendants involved in the killing of Mr. Cohen on January 15, 1975?

A I refuse to answer on the grounds it might incriminate me.

Q Do you refuse to answer any questions about that particular occurrence?

A Yes.

Q You refuse?

A (Nods head.)

Q On what grounds?

A It might incriminate me.

MR. JOHNSTONE: That's all, Your Honor.

COURT: You may step down.

(Witness excused)

COURT: Again the Court wants to instruct the jury that the mere statements that Mr. Dew has taken about the 5th Amendment, he has a perfect right under the law to say

that; and you are not to infer anything by it. It's as though he had never appeared on the stand and you heard nothing, because you haven't heard anything.

* * * * * *

(Proffered in the record)

MR. JOHNSTONE: Let the record show that our client, Sandra Lockett, was brought over to the courtroom at approximately 9:15 a.m. and that Mr. Bayer and I again inquired of Sandra Lockett if she wished to take the stand in her own defense, and to that she replied she did not. Is that correct, Sandra?

DEFENDANT: Yes.

(Whereupon, the Jury enter the courtroom.)

COURT: Mr. Johnstone, are you prepared to go forward?

MR. JOHNSTONE: Yes, Your Honor.

COURT: You may proceed.

MR. JOHNSTONE: Your Honor, please, we wish to advise the Court that we have no witnesses to present.

COURT: Does the Defense rest at this time?

MR. JOHNSTONE: The Defense rests.

DEFENSE RESTS

* * * * * *

COURT: Mr. Shoemaker will open and Mr. Rudgers will close. All right, you may proceed.

MR. SHOEMAKER: Thank you. May it please the Court, Counsel for the Defendant, Ladies and Gentlemen of the Jury, at this period of time is what's known as closing argument, somewhat similar to the forepart of this case when each side came before you and explained to you what they felt their case was all about.

What I have to say to you of course is not evidence, and the Judge will instruct you it is not evidence. It's merely an aid to help you to understand what the State feels the evidence in this particular case has shown against the defendant Sandra Lockett.

Now, if I should inadvertently happen to say something—and I am sure Mr. Rudgers and other Counsel

feel the same way—that is not quite exactly the way you remember it, I assure you it's accidental. We spent several hours, all of us. You twelve good people can remember minute, individual facts better than any of us on an individual basis.

Let us start off, the first thing that brought the charges was the indictment. Again the Judge will instruct you this indictment that was returned by the people of Summit County in the Grand Jury, who served on it, is not evidence and is not to be construed by you as evidence. It's simply a mechanism, the machinery that brings the charges against this defendant, places her in this courtroom in front of you people to determine criminal responsibility.

The indictment says, among other things, that this defendant purposely committed felony murder. It says she purposely committed aggravated robbery.

Now bear in mind the wording in the indictment, ladies and gentlemen, is simply the mechanical means to bring the charges.

The State does not say, nor is it required to say in this particular case to find the defendant guilty, that she actually had her finger on the trigger, that she was actually in the store at the exact time the weapon was discharged. The State is alleging, as it is allowed to do by the laws of the State of Ohio, that she assisted; she aided; she abetted; she associated herself with other people with the common design, common purpose to commit a robbery and the ultimate outcome of this particular scheme, plan, association was the death of Sydney Cohen on January 15, 1975.

Now, certain items in this case, I don't think, ladies and gentlemen, are in dispute. Sydney Cohen was a living person, now deceased. The crime occurred in Summit County, Ohio. I don't think there's any question that this occurred in this area on the time in question.

Other points in the stipulations that have been read into the record and explained to you, there is no dispute.

The question is where really does criminal responsibility lie? Certainly it lies on the feet of Al Parker. No doubt. He is one that is responsible. But there are others in this case that are responsible.

Nathan Earl Dew, he has a responsibility. James Loc-

kett, he was responsible, too. I think the evidence in this particular case shows that criminal responsibility goes to a fourth person, the defendant seated over there.

Bear in mind responsibility, because as I told you before in my opening statement, one of your chief functions is to determine responsibility—whether or not she's a party to what went on on January 15th at 42 E. Market Street?

What else did I say in the opening statement? I said to you, ladies and gentlemen, that I would explain to you at that time what the State's case was all about and I think that I did fulfill these promises. And as Mr. Johnstone said also in his opening, these are promises. I think I can come before you now and honestly say I think the State has fulfilled its promises. It has. I told you who you would hear from. I told you basically what the tenor of their testimony would be. I also told you that as you heard this case unfold before you, you would be sure of one thing, and that was what we were dealing here with was not a Sunday School class. We are dealing with real, live human beings. We are dealing with life, the bad side of life. No question about it.

The system of criminal justice is designed, is meant to deal with the bad side of life. The people involved in the criminal justice system, ladies and gentlemen, the defendants are from the bad side of life.

Unfortunately, by and large when crimes occur, they occur in areas and around where many times witnesses perhaps are people who you would not want to have as neighbors, or relatives, but this is life.

We deal with hurt, maimed victims. This is life. This is what you heard from in here.

Now let's look at this opening statement. Certain promises were made. I think we fulfilled them. Mr. Johnstone made some promises. I will go into those later on, as to whether or not he fulfilled those.

Now let us look basically at what the real facts of this case are. Let us stop and think and reflect what the state has shown. It has shown that four people perpetrated a crime—three men and one woman. Of those three, those three men, three of those people were not from this area. One of the persons, the fourth person was.

The State has shown that the night before all this hap-

pened, there was conversation which I will get to in a second, discussion among these four people; and not only was this discussion where people were just simply present and overhearing this conversation, it was a type of conversation that all four of the parties—James Lockett, Sandra Lockett, Nathan Earl Dew, and Al Parker were active participants in this discussion. They weren't simply sitting on the sidelines. They were actively participating.

This defendant participated on several occasions. Further we find from the basic facts the following day, more conversations. Again, in relation, back to those ones the night before—same people, to include her.

Finally, the action at the pawn shop, the leaving of the pawn shop.

This then is the bare facts of the case that the State has shown. These are the real facts.

Now let us go into something else. Let us stop to consider just a second the law. In this particular case, as in all cases, of course, the State has to prove each and every element, ladies and gentlemen, beyond a reasonable doubt. That's the burden the State of Ohio has had in every case before this one, has in this case, and will have in every case subsequent thereto.

Does the law fit the facts?

To allow me to come before you and say this defendant is responsible, criminally responsible for what happened down there, certainly one of the things that the State has to prove is that there was an aggravated robbery.

Aggravated robbery is basically a situation where someone takes something from another and the thing that's taken is of any value, however small; and the manner of the taking is by the use of a deadly weapon and/or by inflicting serious physical harm on someone else.

Was a deadly weapon used in this case? Was serious physical harm inflicted on Sydney Cohen?

The State also had to show that the robbery was a purposeful undertaking. I'll get to purpose in a second.

The State also has to shown that secondly, if we expect you to convict this defendant of the crime of aggravated murder that aggravated murder was perpetrated.

Aggravated murder is when someone while in the course

of committing aggravated robbery, attempting to commit, purposely kills another person. And again we have to have a purpose. We have to show all these things beyond a reasonable doubt.

Now, bear in mind that beyond a reasonable doubt is not beyond all possible doubt because everything relating to human affairs or dependent upon moral evidence is open to some possible or imaginary doubt. We only have to prove it beyond a reasonable doubt.

You will hear further in the explanations of Judge Barbuto here the term reasonable doubt, and in the explanation of the term reasonable doubt the Judge is going to explain to you that two of the words in the definition of reasonable doubt are reason and common sense, and bear this in mind—reason and common sense. Look at this case with reason and common sense. Evaluate this case. Evaluate the facts. Evaluate this defendant seated over here.

Now, let's look at the term purpose. I said I'd say something further about this. Purpose is a decision of the mind to knowingly do an act with a conscious objective to achieve some specific result. Now generally unless someone comes forward and said, "I purposely" did something or speaks it orally, you don't know.

The State of Ohio as in most states—in fact, all the States provide a mechanism where if someone doesn't speak a purpose, the jurors can infer a purpose. How do the jurors infer a purpose? They look at all the facts and circumstances. You can't look inside the person's head in a direct sense, but indirectly you can. You look at all the facts and circumstances. Consider how the crime was perpetrated. Consider the weapon used, and with these you can infer.

What's an inference? An inference is where you use some known facts to infer other facts. You heard a saw going out here. I think we all did on occasions here during this trial. If you happened to walk outside, and see a man there with a board and saw in one hand, you can infer from the sound of the saw, walking outside the courtroom, seeing the man with the saw in his hand, seeing two pieces of board, that he's sawed the board in two.

Now another thing, in this particular crime—don't forget the Judge will explain to you aiding and abetting. Aiding

and abetting is a principle that's been around as long as the presumption of innocence has been around because it's a necessary part of the criminal justice system. If it were not for the law of aiding and abetting, anybody could say I just happened to be standing around outside, had nothing to do with it, and of course they would go free.

Aiding and abetting is where someone, as I have said before, aids, assists, helps, associates themselves with another or others to commit a crime.

Now, the law will be explained to you further by the Judge that when co-perpetrators of a crime associate themselves together, help each other, work together, that each and every participant in the crime is equally responsible for whatever the other parties do. The law presumes that co-perpetrators of a crime acquiesce in whatever is naturally and necessary to happen by any of the other members involved in the criminal plot.

The State of Ohio would say to you that in this particular case Al Parker, who was in the store, who pulled the trigger, who shot Sydney Cohen is guilty. No question of it. We would further say that because of her activities surrounding the night before, the day that they went down there, and afterwards show that she is a part of this. She is bound, ladies and gentlemen, by the law. She is bound by the natural and probable consequences of all the *voluntary acts* of all the perpetrators of this crime.

Just as surely as if Mr. Rudgers and I went to rob a Lawson's store and I sat outside, had the car running and knew all about it, helped Mr. Rudgers concoct the scheme and plan and he goes in the store because maybe he's just a little bit braver, or more familiar with the weapon, he goes into the store; one of the clerks makes a false move, whatever it happens to be; he shoots them; even though I'm outside, I don't know what's going on inside, I'm just as guilty.

And so with Detective Sehika, if he had been the planner from the onset; he says I'll wait here, you bring the money back, here's the gun, I'm going to sit at home. She doesn't need to be in the store. That's the law.

COURT: I'll tell them what the law is. Let's not use that word again.

MR. SHOEMAKER: Yes. sir. Thank you, Judge. She's

just as guilty.

Now, let's look at some of the facts and the evidence that's been portrayed. What do we have? We have had the State of Ohio presenting several witnesses. First of these was Al Parker. Now, the State of Ohio does not say to you that Al Parker is a fine human being. We do not say to you again that he is a person who you'd want to have a neighbor or relative. We say to you he is what he is. He's a killer. He shot someone.

As I have also said to you, when the State of Ohio presents the case, we can't pick and choose the people who come forward and testify. Certain people say certain things. Certain people see certain things. Certain people hear certain things with their senses. Certain people have the ability to come forward and tell what happened. Al Parker did. Al Parker made a deal with the State of Ohio. No question of that. A long time after he told the State of Ohio what happened. We admit this. This is a nasty business, as I have told you before. The State of Ohio does not like to do this. The State of Ohio has a right to have its laws enforced and all people who are equally guilty in a crime have the duty to be called before the Bar of Justice. Al Parker came in here and testified to you. He has nothing to gain and nothing to lose.

He plead guilty to aggravated murder. That's a life sentence. He testified to you, I feel, truthfully and candidly. Why can I say this? Because what the other witnesses said fit into what he's told.

We know that the other witnesses, such as Ronda Reed, corroborate what's going on. The eye-witness to this robbery, she tells you what little bit she saw. As she gets out of the car with her father, she sees the three people going up the street—sees them in the store, when the gun goes off. I'm talking about the three males now.

We heard from Joanne Baxter. Joanne Baxter is probably a person you might not want as a daughter, a daughter-in-law, something like this, but there again her explanation of what happened fits in, goes in together, goes in with what Al Parker has said.

What do we know? We also know that by the testimony that's been presented here that this woman seated right

over here, the night before engaged herself in conversations on several occasions with James Lockett, Al Parker, Nathan Earl Dew. The first of these, of course, occurred between herself, Nathan Dew and Al Parker there in the house when they first got there from New Jersey. Discussions at that point. She's a part of it. She's making suggestions.

They go to the Methadone Clinic for her. On the way, four people in the car—three plotters that are in the car at this particular time were Al, Nathan and her. Joanne overhears this. They go to the Turner Funeral Home to get Joanne's keys so she can get back into her apartment. On the way from the Turner Funeral Home, more discussions, suggestions, likely places to get money from. Again who is giving the directions? Her, seated right over there. You must remember that she also played a very active part in this case. Even though Al Parker pulled the trigger on the victim, this woman right over here is the woman that pointed out the victim in this case.

I think it can be said but for her action, her activity, her suggestions, her planning in this particular case, maybe Sydney Cohen would still be alive.

Her Buddy, her friend, brings up another subject. We are to believe perhaps that Nathan Dew went into that store to pawn a ring. If the ring were to be pawned, what would be the natural thing to do? Someone who knew the pawn broker? That would be the natural thing, I would submit to you, to go into the store and pawn the ring, get a better deal on it. Why does she wait out in the car if she knows him?

Something else—if we're just going to pawn the ring, and that's probably what the Defense Counsel would have us believe—if we're just going to pawn the ring, why do they go clear across town to Callis Oval, Channelwood Village, to pick up Joanne—I'm sorry, to pick up Al Parker? Why do that? If they are down there on North Street and they want to pawn that ring to get out of town? Nathan Dew was down there on North Street, too, Tarbell, the two houses down there, and it's his ring. Why go all the way across the town to get Al Parker? They have a car. They have transportation.

I would submit the reason they went across town to get Al Parker, to get the other plotter, these plans, so they'd be all ready to go.

Mr. Johnstone in his opening statement said to you that this woman over here when she found out what happened, she willingly came to the Police Department and told them what happened, told them the truth. That was his opening statement.

What do we find out? We find out that the only time that she tells the truth about anything in her version of the truth that afternoon is at 2:00 o'clock or approximately that time, after they have picked up her and Al in the taxicab, gone down and talked to Detective Saunders in the Akron Police Department. Does she tell them the truth? No. She lies.

MR. JOHNSTONE: Object. No evidence in this record relative to that incident at all, if it did occur.

COURT: Yes.

MR. SHOEMAKER: I beg to differ with you, there is.

COURT: Let's not argue with each other. Let's get on. This is closing argument.

The court has said to you this is not evidence and shall not be considered by you as evidence. That applies to both parties.

MR. SHOEMAKER: What did Al Parker testify to? He testified that he went into the Police Station and with Sandra Lockett present, they both told the Police about how he had been in Chicago, just come in, lived there three weeks with her. Phone call was made to the house down there, and they were released. That's the truth, her version of the truth.

Now let's go on to a few other things. What happens on the day of the crime? She goes down there with them. Is the car running? Yes, it is. When she leaves after all this occurs down there at the pawn shop, what happens then? Where do they go? Over to the aunt's house. Who gives directions on how to get to the aunt's house? She does. Does she stay at the aunt's house? No. She goes again with Al Parker. In what? In a taxicab. Who gives directions in the taxicab? Her. Stopped by the Police, a short while later, as the cab driver testified to.

What happens then? Does she disassociate herself with all this? No. What does she do? She goes down there, as Al Parker testified, to the Police Station and at that particular time corroborates the two stories. At that point they are released.

This is what it's all about. These are the facts of the case.

Mrs. Garrett came in here and testified to certain things. Sydney Cohen can't testify. He's dead. But Mrs. Garrett can testify to certain things that ultimately Sydney Cohen said and did shortly before his death. One of those is that during the time here in question, about 12:51 on January 15th, about 12:51, a robbery alarm was sounded by Sydney Cohen. No. 2, he gave the date and time. Those are the two things, the last acts of Sydney Cohen.

The State of Ohio, ladies and gentlemen, has put each of us in a separate position. As I have said before, you weren't there and I wasn't there. You have the job to evaluate the facts. We have the job to present the facts to you. And I would say this to you that there is a presumption of innocence. The State agrees with this. That's to protect innocent defendants. But the State has the burden of proof of beyond a reasonable doubt. We assume that obligation readily and willingly. But also there are rights, rights of people in this community, rights of the victims like Sydney Cohen, to be assured the laws of the State of Ohio are enforced and I would submit to you at this point that the presumption of innocence in this trial has been ripped aside by the evidence that's been presented by the State of Ohio and shows clearly and without any possible doubt that this woman right over here is just as guilty of aggravated murder as if she had been in that store and had her finger on the trigger, and did the very act that took the life of Sydney Cohen on January 15th.

COURT: Mr. Johnstone?

MR. JOHNSTO[illegible]f Your Honor please, Counsel, Ladies and Gentlem[illegible]he Jury, we have been allotted 45 minutes, which I do[illegible]pect to take, and you're not going to hear any ranting and raving on my part, unless I am unable to control my indignation when I speak about a cer-

tain thing.

I have found after many, many years of knocking around the courts—many more years than some of you are old—that everyone has rights. And that is especially true in the court where things extremely important to litigants are decided, possibly finally decided.

And it's especially true in a case of this sort where life or death is at stake. One of those rights is what I referred to in the opening argument as being the cornerstone of the American system of criminal justice or criminal jurisprudence; and that is that any defendant hailed before a criminal bar is innocent until proven guilty beyond a reasonable doubt.

I shall not attempt to define reasonable doubt to you. That will be very well done by His Honor, Judge Barbuto. But I'm going to raise the question of reasonable doubt because the only witness that appeared before you who testified concerning the real crucial matter was this man Al Parker, who, to save his own miserable hide, agreed to turn state evidence, and did turn state evidence for the purpose of having the other three defendants sentenced to the electric chair.

MR. RUDGERS: I'm going to object to that reference, Your Honor. That's not the fact.

COURT: Let's go on.

MR. JOHNSTONE: That was the deal made, the deal made by the sacrosanct State of Ohio to let this triggerman go. It was done with the connivance of these gentlemen right here. Parker's testimony was bought and paid for—bought and paid for. I don't care how the matter is dressed up to make it palatable to your sense of morals and justice. I don't care what they say about that. It's not palatable to me, and I think that when you listen to your conscience you will say it's not palatable to you.

You have the option, as His Honor will tell you I'm sure, to believe or disbelieve anything that was said by any witness; and you can start with the very first reply to the so-called Al Parker to the first question the State asked him—what is your name? Al Parker. That was the first lie that he told. His name is Green. He changed it to Al Parker because he skipped bond. I think you can go from there and

disbelieve everything he said. That's your province.

Now, in view of that testimony from that admitted criminal person, that testimony in view of that testimony which was bought and paid for by the State of Ohio, do you think you can resolve these issues against Sandra Lockett beyond a reasonable doubt? Because Sandra Lockett is not guilty and is entitled to go free if there was no conspiracy to rob Sydney Cohen.

You're going to have some options which the Court will give you. The whole crux of this entire matter is whether or not this evidence which you have heard from the State persuades you beyond a reasonable doubt that there was conspiracy to rob Sydney Cohen? Admittedly we don't have much evidence to rely upon. I would be insulting you if I told you we did. But we have some extremely important little items, which I think demonstrate the truth in this matter and the falsehood of Al Parker's testimony better than if he had spent two hours up on that stand denying this, that and the other thing.

Now, what are those items? They are fairly simple. They are these. In my cross examination of Green or Parker, I asked him if there wasn't a deal made that he would turn state's evidence and testify against other defendants to save his own miserable hide, although I didn't put that into the question. He replied yes. I think his exact words were, "I was told I would be expected to testify against the other three defendants." That's what he did. That was the bargain offered him by the State of Ohio. That was the deal offered to him by the State, no matter how immoral it was. That was the deal Al Parker accepted, and he paid for the deal by his testimony.

Now the other two little items—when I say little, I mean they are short but extremely important. Believe me, extremely important. Remember. I asked where is that ring? Somebody picked it out of this box. Here it is. I asked Al Parker if he knew whose ring this was or if he ever saw it beofre? He said, yes, this is Nathan Earl Dew's ring, or Nathan Dew's ring. And here's the extremely important thing. I said, is this the ring that you took to Cohen's pawn shop to pawn? Al Parker said, yes. And then I followed it up with this question, for the purpose of getting money to

go back to New Jersey or New York? Al Parker said, yes.

Now, by those two answers, he refutes all the lying testimony he gave before, and gives you the right if you so see fit, if in your deliberations when you listen to your conscience and that tells you that that should be your decision, gives you the logical, legal right to disbelieve everything that the confessed criminal said. You would not be violating logic, if you came to that conclusion; and I personally hope that you strike a blow for decency and against bought and paid for testimony.

If it had been one of the others who didn't pull the trigger, it might have been a more palatable thing, but there's the triggerman, the man who actually killed Sydney Cohen, the man who actually had a certain pistol under his control, the pistol that Sandra Lockett never saw before.

You remember, in my opening argument or statement I said that I defied the State to prove these allegations that she did inflict serious physical harm to another, i.e., she did kill Sydney Cohen in the city of Akron, County of Summit and State of Ohio with a deadly weapon, which was on or about her person or under her control, to-wit, a pistol. The pistol referred to is this pistol here.

I suppose a few other references should be made, especially about Joanne Baxter. I don't know how much she was doped up from smoking marijuana, grass, or whatever they call it. It is a dope. I don't know what pressures were put on her. I don't know what she had bargained, although her testimony was of small moment.

I do know what Al Parker had to bargain. He had to bargain his life and he saved his life by trying to take the lives of three others.

Now, as far as Sandra Lockett is concerned, she was on heroin. How badly she was hooked, you have not been told. But remember this, at least she had the character and does have the character to attempt to get off of that drug. She is on methadone. She doesn't want to be a hop-head. She's trying. She was willing, as Joanne Baxter said, to go to the Methadone Clinic. I suppose in your experience you know what that's for. It's for the purpose of helping people kick a bad drug habit and it works. How long it has to be done, I have no idea. It's immaterial. She's trying. She has the

character to try.

I don't know what else to say. I could take the rest of the time that I have, which is quite a few minutes, which I'm not going to do, and belabor this question of this filthy deal, this bought and paid for testimony of Al Parker or Charles Green or Slim Green, whatever it may be. I'm not going to do that. I am going to ask you, ladies and gentlemen, to do this when you go back into your jury room to deliberate on this case, to listen to your conscience, to listen to your conscience, to have in mind this deal between the great State of Ohio and Al Parker, and to have in mind the charity and brotherhood of our Lord Jesus. I hope that God may guide you.

MR. RUDGERS: Ladies and Gentlemen, sometimes this part of closing argument comes difficult for the State of Ohio, and it's difficult in this case because what's supposed to happen here is the State is supposed to rebut the propositions presented in the closing argument of the Defense. They haven't presented anything to rebut. They haven't talked about the evidence in this case. They haven't talked about the witnesses. They have talked about a deal which the State has told you from the outset in this case occurred; and told you from the outset in this case that it occurred so that justice could happen in this courtroom. We didn't hide the deal. I asked you about it. I asked you if you could consider the testimony, knowing about it? You said yes. I told you that the deal was based on the criminal rules that exist in Ohio, the law that every single attorney in this state is sworn to follow. That law says that when justice requires, the State can drop specifications against one defendant. And in this case justice required it so that defendant Al Parker would come in here and tell you the truth.

We talked an awful lot about duties during voir dire, jury selection in this case, ladies and gentlemen. Duties, the duty of the jury is to listen to the evidence; listen to the law as the Judge gives it to you and make a decision as to guilt or innocence. That's the duty of the jury, ladies and gentlemen.

What you heard with the State's witnesses, witnesses for

the State of Ohio, is uncontradicted and unrefuted testimony by Al Parker, Joanne Baxter, Mrs. Garrett, Ronda Reed, the cab drivers involved. That's what you heard—uncontradicted, unrefuted evidence from the witness stand. That's what you must decide the case on, ladies and gentlemen.

Mr. Johnstone spends a lot of time talking about the indictment, which isn't evidence. The indictment is the legal mechanism to bring a defendant to trial.

The Judge will tell you the law, the law of aiding and abetting which applies in this case, complicity, helps, aids, assists, encourages, directs, or associates with others in the commission of a crime. That's what the State has alleged in this case. We have told you that from the outset. That's what the evidence has proven, ladies and gentlemen, aiding and abetting. The key legal concept, you will hear the legal definition from the Judge.

You promised to follow the law. You promised to follow the law based on the evidence you heard in this case. That's all the State wants.

Aggravated robbery? Did the crime occur, ladies and gentlemen? No doubt. Uncontradicted, unrefuted that there was an aggravated robbery. No evidence to the contrary.

Aggravated murder? Did that occur? Unrefuted, uncontradicted testimony and evidence that an aggravated murder occurred. You will deal with Specifications 1 and 2. Specification 1—did the aggravated murder occur in the context of trying to escape detection? The State submits to you, ladies and gentlemen, that the reason the aggravated robbery occurred was to escape detection.

Specification 2—you must decide did the aggravated murder occur as the result of the commission of the crime of aggravated robbery? That's what this whole case is all about. The robbery led to the murder.

Let's talk about aggravated robbery. What is that crime? What's the anatomy of an aggravated robbery? The anatomy of that crime, ladies and gentlemen, is you walk in with the gun or you obtain a gun, as was done in this case. You hold it to the victim. You say "your money or your life." And the victim has only two choices; gives up his

money or he resists. The holdup alarm—you see the pictures of it that are in evidence. Sydney Cohen tried to warn about the robbery and he paid for it with his life. Anatomy of a robbery? That's how it occurs. That's how every robber, everyone who associates with robbers, knows a robbery occurs. That's why the natural and probable consequences of the aggravated robbery were the aggravated murder.

Let's talk about the evidence. The evidence uncontradicted and unrefuted that shows that this woman, this heroin addict participated in the crimes of aggravated robbery and aggravated murder. And remember, ladies and gentlemen, you participate in the crime of aggravated robbery as an aider and abettor and you acquiesce to the acts of every other participant. Al Parker, Earl Dew, James Lockett, Sandra Lockett, all the same in the eyes of the law.

Let's look at the evidence. Al Parker's testimony; Al Parker, an interloper; and the State isn't going to vouch for his character. We don't have to. He comes into this community, led by that woman. He comes in from the east coast. Earl Dew comes in from the east coast. James Lockett was here; goes back to the east coast where he was living, to come back here. Who brings them in here? She does. She's the resident of Akron. She's the one that knows the Akron area. She's the one that knows where Easter's grocery store is. She's the one that knows where the furniture store is. She's the one that knows where the pawn shop is. She's the one who is the buddy of Sydney Cohen. She, ladies and gentlemen, caused the death of Sydney Cohen as much as anyone else in this case because if it wasn't for her, they wouldn't have known about the pawn shop. They wouldn't have gone there. It was her idea to go to the pawn shop.

Aiding and abetting, assist, help, associate with, encourage—aiding and abetting. If you would believe the Defense, she didn't aid and abet, well then tell me why she doesn't go in and help her buddies pawn a ring? Why? Because she can be identified. Sydney Cohen knows her. Does Sydney Cohen know the three interlopers from the east coast? No. She's got to tell them where to go. She's got to tell them what to do. She knows the pawn shop. She knows

the pawn shop owner. She stays out in the car so she cannot be identified. She's the only one that can be identified, so she doesn't go in. If you're going to pawn a ring, is she going to sit out there? Or is she going to go in and talk him into making a good deal for the ring? They weren't going to pawn the ring. That was the pretext to get in there.

Aid and abet, stays in the car; uncontradicted, unrefuted she's in the car. Parker leaves the car, turns it off; comes back and the car is running. Her. She's the one who turns the car on, gets it warmed up so can make a quick getaway. Her and Parker leave. Where do they go? They go to her aunt's house over by City Hospital. Don't pass through the center of town again. They go over there. Where do they go from there? They get a cab. They've got a car there. Why do they take the cab? They don't want the car to be identified.

Who instructs the cab driver on the route to take? You heard him, Lowell Hayes, corroborates, substantiates Al Parker's testimony. She did. She told that cab driver to go down Upson Street to Arlington. Why? Lowell Hayes told you. It avoids the center of town. It avoids the Market Loan. More money? More time? It doesn't matter because they just committed a crime together and they can't be detected. So she helps there, too.

Admitted heroin addict. Motive? How do you pay for heroin, ladies and gentlemen?

We talked about duties a lot. The duty of the jury is to listen to the facts, listen to the law, apply the law to the facts. The duty of the Prosecutor? The easiest thing in this case, ladies and gentlemen, would have been to convict Al Parker only and let these other three go. He confessed the day after the crime. He couldn't get out of it. That's what the easiest thing for the State to do would have been. But justice, ladies and gentlemen, justice in this country and in this state and in this community requires that everyone—everyone involved in a crime pays. And so the State didn't take the easy way out and just go after Al Parker. The State chose to prosecute all of these people involved.

If you think that the Prosecutor's Office of this County connives, tries to frame people, well then you turn her loose. She can walk right out of this courtroom; find her

not guilty if that's what you think the people in the Prosecutor's Office and this State, this County are doing. But if you think she aided, abetted, helped, encouraged, assisted, and associated with others in the commission of an aggravated robbery which led to aggravated murder, then you must find her guilty. That's your duty. That's the duty you all willingly assumed when you took your oath.

Let's talk about Al Parker. I have already mentioned one of the obvious reasons to make him believable. He confessed the day after the crime. Those statements were the same statements you heard, the very same. Believable? He didn't change his story. That's the same story that he told the day after the crime occurred. Al Parker believeable?

Mr. Johnstone asked Al Parker, did you testify in the James Lockett trial? Mr. Johnstone asked Al Parker what happened to James Lockett, wasn't he convicted of aggravated murder, or aggravated robbery and specifications? Believeable? Is Al Parker believeable? Every witness that came in here substantiated his story. Joanne Baxter, the cab drivers, Mrs. Garrett, Ronda Reed, everyone—uncontradicted, unrefuted evidence.

Nothing. No evidence from the Defense. Forget about their opening statement. They didn't prove a thing they said they were going to prove to you.

Finally, is Al Parker's testimony believeable? Ladies and Gentlemen, when Al Parker walked into this courtroom and testified, he broke the cardinal rule of all criminals, and that is you don't rat on other criminals.

Al Parker goes to prison for life for pleading guilty to aggravated murder, purposeful killing of another person while committing aggravated robbery. He committed and violated the unwritten law of all criminals and he's going to go down to the Penitentiary and everyone down there is going to know it. He testified against those people that involved him in the plan to rob Sydney Cohen, and that robbery, ladies and gentlemen, as sure as we are sitting here, led to Sydney Cohen's death.

Reasonable doubt, ladies and gentlemen—reasonable doubt, if you are convinced beyond a reasonable doubt, you must find her guilty. Reasonable doubt can be best defined

by the words common sense. Common sense, ladies and gentlemen, tells you that three people from the east coast can't come in here and pull a pawn shop robbery without help from someone in the city. Common sense, ladies and gentlemen, tells you that that person is Sandra Lockett.

Charity and brotherhood? Mr. Johnstone talks about charity and brotherhood. Where's the charity and brotherhood when they planned this aggravated robbery? Where was the charity and brotherhood when Sydney Cohen lay dead on the floor in his pawn shop, as he attempted to do what any citizen would do? No charity and brotherhood.

She doesn't deserve any more than Sydney Cohen got. Common sense, ladies and gentlemen, common sense was a witness in this case just as much as any other. Common sense said that Sandra Lockett participated in the crime of aggravated robbery as an aider and abettor, which led to the death of Sydney Cohen.

And human nature, ladies and gentlemen, the other silent witness in this case, said that she would try and get away with it.

The people of this community, ladies and gentlemen, who you represent, await your verdict.

* * * * * *

CHARGE OF THE COURT

COURT: Ladies and Gentlemen of the Jury, you have heard the evidence and the arguments of Counsel. Now it's my duty to instruct you as to the law that's applicable to this case.

I'd like to say this to you at the outset, that the only thing that you are allowed to consider is the evidence between the State of Ohio and Sandra Lockett. Names have been mentioned here of other individuals. The only evidence that you are to consider is the State of Ohio vs Sandra Lockett and not any other individual. Your verdict will rest upon the evidence that's presented against her and her alone.

As the Court has said, it's my responsibility now to charge you as to the law and you must accept the law as I give it to you and you are not allowed to change it or wish it was something else, but must follow the law as you have sworn to do.

As has been said before, a criminal case begins with the filing of the indictment. The Court is going to read the indictment to you merely to inform you. It says: "That Sandra Lockett, also known as Sandra Majal Lockett, on or about the 15th of January, 1975, at the County of Summit aforesaid, did commit the crime of aggravated murder in that she did purposely cause the death of Sydney Cohen, while said defendant was committing or attempting to commit, of fleeing immediately after committing or attempting to commit aggravated robbery, said death being contrary to the law, and further said cause of death being done under aggravated circumstances, to-wit: Specification 1, that said offense was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by said defendant, to-wit: Aggravated Robbery.

Specification 2, to Count No. 1, that the offense, the killing of Sydney Cohen, was committed while the said defendant was committing, attempting to commit or fleeing immediately after committing or attempting to commit aggravated robbery.

Count No. 2, that Sandra Majal Lockett, in the County of

Summit, State of Ohio, on or about the 15th day of January, 1975, in the County of Summit did commit aggravated robbery while she was attempting to commit or committing a theft offense; said defendant, Sandra Majal Lockett did take and deprive Sydney Cohen of certain property, to-wit: one Smith & Wesson Pistol, Serial No. D683568, Blue Steel, or while fleeing immediately after such attempt or offense did inflict serious physical harm to another, she did kill Sydney Cohen in the City of Akron, County of Summit and State of Ohio with a deadly weapon which was on or about her person or under her control, to-wit: a Pistol, said offense of Aggravated Robbery in violation of the law."

The indictment, as the Court has said, merely informs you that a charge has been placed against her. The fact that this indictment was filed may not be considered for any purpose.

The plea of not guilty is a denial of the charge and puts in issue all the essential elements of the crime of aggravated robbery, aggravated murder, the specifications, and any lesser included offense.

The defendant is presumed innocent until her guilt is established beyond a reasonable doubt. The defendant must be acquitted unless the State produces evidence which convinces you beyond a reasonable doubt of every essential element of the crime charged in the indictment, or any lesser included offense.

Reasonable doubt is present when after you have carefully considered and compared all the evidence, you cannot say you are firmly convinced of the truth of the charge.

Reasonable doubt is a doubt based on reason and common sense. Reasonable doubt is not a mere possible doubt because everything relating to human affairs or depending upon moral evidence is open to some possible or imaginary doubt.

Proof beyond a reasonable doubt is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of their own affairs.

If after a full and impartial consideration of all the evidence you are firmly convinced of the truth of the charge, the State has proved its case beyond a reasonable doubt. If you are not firmly convinced of the truth of the charge, the

State has not proven its case and you must find the defendant not guilty.

The word evidence has been used numerous times. Evidence is all of the testimony received from the witnesses and exhibits admitted during the trial, and facts or stipulations agreed upon between the Attorneys.

Evidence may be either direct or circumstantial or both. Direct evidence is the testimony given by a witness who has seen or heard the facts to which he or she has testified. It includes the exhibits admitted during the course of the trial.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. Circumstantial evidence is the proof of facts by direct evidence from which you may infer other reasonable facts or conclusions. In the absence of direct evidence, circumstantial evidence by itself will justify a finding of guilty only if the circumstances are entirely consistent with the defendant's guilt, or wholly inconsistent with any reasonable theory of the defendant's innocence; and are so convincing as to exclude a reasonable doubt of the defendant's guilt.

Where the evidence is both direct and circumstantial, the combination of the two must satisfy you of the defendant's guilt beyond a reasonable doubt.

The evidence does not include the indictment, opening statements or closing arguments of the Attorneys. They are only designed to inform you and to assist you, but they are not evidence.

You are the sole judges of the facts, the credibility of the witnesses and the weight of the evidence. To weigh the evidence you must consider the credibility of the witnesses. You will apply the test of truthfulness which you apply in your daily lives. These tests include the appearance of each witness upon the stand, his or her manner of testifying, the reasonableness of their testimony, the opportunity he or she had to see, to hear, and to know the things concerning which they have testified, their accuracy of memory, their frankness or lack of it, their intelligence, their interest and bias if any, together with all the facts and circumstances surrounding their testimony. Applying these tests, you will assign to each witness such as you deem proper.

You are not required to believe the testimony of any witness simply because he or she is under oath. You may believe all or part or none of their testimony.

In this particular case the defendant did not testify. It is not necessary that the defendant take the stand in her own defense. She has a constitutional right not to testify. The fact that she did not testify cannot and must not be considered for any purpose.

You have heard from Al Parker in this case. Al Parker is a co-defendant. He is also known legally as an accomplice. An accomplice is one who purposely or knowingly assists or joins another person in the commission of a crime.

The testimony of a witness whom you find to be an accomplice should be considered together with all the other facts and circumstances in evidence. Applying the general rules for the credibility of the witnesses, you will determine from his testimony its worthiness of belief. Whether Al Parker was an accomplice and the weight that you give to his testimony are matters for you, and you alone, to determine.

The testimony of a witness whom you find to be an accomplice should be considered in the same way as any other witness. However, no person shall be found guilty of aggravated murder, the specifications, aggravated robbery, or the lesser included offenses upon the testimony of an accomplice unless the testimony of the accomplice is supported by other credible or believable evidence of the essential elements of the crime or crimes.

A person who purposely aids, helps, associates himself or herself with another for the purpose of committing a crime is regarded as if he or she were the principal offender and is just as guilty as if the person performed every act constituting the offense. This is true even if such person was not physically present at the time the crime was committed.

When two or more persons have a common purpose to commit a crime and one does one part and the second performs another, those acting together are equally guilty of the crime.

A person engaged in a common design with others to rob by force and violence an individual or individuals of their property is presumed to acquiesce in whatever may rea-

sonably be necessary to accomplish the object of their enterprise. And if under the circumstances it may be reasonably expected that the victim's life would be in danger by the manner and means of performing the criminal act inspired, each one engaged in the common design is bound by the consequences naturally or probably arising in its furtherance.

If the conspired robbery and the manner of its accomplishment would be reasonably likely to produce death, each plotter is equally guilty with the principal offender as an aider and abettor in the homicide, even though the aider and abettor was not aware of the particular weapon used to accomplish the killing. An intent to kill by an aider and abettor may be found to exist beyond a reasonable doubt under such circumstances.

The defendant is charged with aggravated murder. Aggravated murder is the purposeful killing of another while committing or attempting to commit aggravated robbery. Before you can find the defendant guilty you must find beyond a reasonable doubt: 1) that Sydney Cohen was a living person and that his death was caused by the defendant in Summit County, Ohio, on or about January 15, 1975; and 2) that the killing was done purposely; and 3) that the killing was done while the defendant was committing or attempting to commit aggravated robbery.

I have used the word purposely. Purposely is an essential element of this crime. It's an essential element of aggravated murder and aggravated robbery. I will just define this word to you once and it's applicable to aggravated murder and it's also applicable to aggravated robbery.

A person acts purposely when it is his specific intention to cause a certain result. It must be established in this case that at the time in question there was present in the mind of the defendant specific intent to kill Sydney Cohen.

Now, purpose is a decision of the mind to do an act with a conscious objective of producing a specific result. To do an act purposely is to do it intentionally and not accidentally. Purpose and intent mean the same thing. The purpose with which a person does an act is known only to himself unless he expresses it to others or indicates it by his conduct.

The purpose with which a person does an act is deter-

mined from the manner in which it is done, the means and method and weapon used, and all other facts and circumstances in evidence.

If a wound is inflicted upon a person with a deadly weapon in a manner calculated to destroy life, the purpose to kill may be inferred from the use of said weapon. The use of a deadly weapon without circumstances of explanation or mitigation may justify an inferring the intent to kill.

Now I've read to you in this Count No. 1, referring to aggravated murder, I have referred to the word aggravated robbery and I will define that to you. This definition is applicable to Count No. 2, as I previously read to you from the indictment for your information. Before you can find the defendant guilty you must find beyond a reasonable doubt that on or about the 15th day of January, 1975, in the County of Summit, State of Ohio, the defendant obtained property of some value, however, small, for the purpose of depriving Sydney Cohen of his property, and that the defendant inflicted serious physical harm upon the person of Sydney Cohen and that the defendant did obtain property of some value, however small, for the purpose of depriving Sydney Cohen of said property.

A person acts knowingly regardless of his purpose when he is aware that his conduct will probably cause a certain result or he is aware that his conduct will probably be of a certain nature.

A person has knowledge of circumstances when he is aware that said circumstances probably exist.

Since you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence.

With regard to the charge of aggravated robbery, you will keep in mind the definition of purpose that the Court has just defined to you.

The Court has used the word deadly weapon. A deadly weapon is an object or instrument which is capable of inflicting death. In determining whether a gun or revolver was used as a deadly weapon, you will consider its nature, its capabilities of being used to inflict deadly harm, and the manner in which you find it to be used and has been used in this case.

I have used the term serious physical harm. Now, serious physical harm may be any condition of such gravity as would normally require hospitalization or which involves acute pain of such duration as to result in substantial suffering or death.

I used the word while, w-h-i-l-e. The word while means that the killing must occur as part of the act or acts leading up to or occurring during or immediately subsequent to the aggravated robbery, and that the killing was directly associated with the aggravated robbery.

Proximate cause is another legal term that the Court will define to you. It is an essential element of the offense of aggravated murder. Proximate cause is an act or omission which in the natural and continuous sequence directly produces the death and without which it would not have occurred.

Proximate cause exists when the death is the natural and probable result of the act or acts.

In addition to these other elements, the State of Ohio must prove venue. Venue is also termed as jurisdiction, the power to hear. This Court nor you as jurors could hear this case if it did not happen in Summit County, Ohio. The State must prove that the offense, the crime or crimes, occurred in this area, and I am referring to the City of Akron, State of Ohio, Summit County.

If after your deliberation you find beyond a reasonable doubt that each and every element of the crime of aggravated murder has been proven, you will return a verdict of guilty. If the State of Ohio has failed to prove any one of the essential elements as I have defined to you, any one, you will return a verdict of not guilty of aggravated murder.

If you find that all of the elements have been proven beyond a reasonable doubt of aggravated murder and you so find, then you will consider specification No. 1. After deliberating upon specification No. 1, you may return a verdict of guilty or not guilty, depending upon the proof that the State must prove beyond a reasonable doubt each and every element of specification No. 1. If that is proven, then your verdict would be guilty. If it is not proven beyond a reasonable doubt, any one of the elements, then you will

return a verdict of not guilty.

After that determination has been made, then you will proceed and apply the same law, the same burden upon the State of Ohio in consideration of specification No. 2. After you have returned a verdict of guilty or not guilty in regard to specification No. 2, then you will continue further and deliberate as to the lesser included offense—the lesser included offense in the event you find the State of Ohio has failed to prove beyond a reasonable doubt any one of the essential elements of aggravated murder. The lesser included offense is involuntary manslaughter. The difference is that purpose is eliminated from your consideration and that the killing was not done purposely, then you will consider whether or not the State of Ohio has proven their case against this particular defendant beyond a reasonable doubt of all the essential elements of involuntary manslaughter and render your verdict of guilty, if they have, and not guilty, if they have failed to prove any one of the essential elements of involuntary manslaughter.

There is Count No. 2 in the indictment known as aggravated robbery. I have read that to for your information. Before you find the defendant guilty of aggravated robbery the State of Ohio must prove beyond a reasonable doubt that on or about the 15th day of January, 1975, in the County of Summit, State of Ohio, the defendant obtained or attempted to obtain or fled after obtaining property of some value, however small, for the purpose of depriving Sydney Cohen of his property, and that the defendant had a deadly weapon on or about his person, and that the defendant inflicted serious physical harm upon the person of Sydney Cohen.

As I said to you before, I have defined the elements in this particular case previously to you and the Court says to you, when you are discussing Count No. 2, you will bear in mind that the State has a burden of proving beyond a reasonable doubt all those essential elements that I have defined to you, such as knowledge, purpose, deadly weapon, serious physical harm, venue, the word 'while', and all the other definitions that I have referred to.

Now, if you find beyond a reasonable doubt that the State of Ohio has proven each and every element of the

crime of aggravated robbery, your verdict would be guilty. If they have failed to prove any one of the essential elements of the crime of aggravated robbery, your verdict would be not guilty.

Gentlemen, is there any additions or corrections you wish the Court to add? Would you approach the Bench?

MR. JOHNSTONE: We have none.

COURT: State of Ohio?

MR. SHOEMAKER: Has none.

COURT: The State of Ohio nor the Defendant have any additions or corrections.

Ladies and Gentlemen, when you go to your deliberating room, you will have with you eight verdicts. I will read them to you briefly' and you are not to arrive at any conclusion how I read these to you. This is the way they were handed to me. I'm going to read them the way they appear.

The first verdict, "State of Ohio vs Sandra Lockett, Indictment for Aggravated Murder, Count No. 1: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her guilty of aggravated murder as charged in the indictment, Count No. 1. We so render our verdict upon the concurrence of twelve members of said Jury. Each of said jurors concurring in said verdict signs his name hereto this _____ day of _____, _____. There are twelve blank spaces for you to fill in in event that you arrive at this particular verdict. It takes all twelve of you to arrive at every one of these verdicts. Again, there are blank spaces for you to fill in. You must fill in the blank spaces. It takes twelve to sign, if you concur in this verdict.

"State of Ohio vs Sandra Lockett, Indictment for Aggravated Murder, Count No. 1: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant, Sandra Lockett, do find her Not Guilty of Aggravated Murder as charged in the indictment, Count No. 1. We so render our verdict upon the concurrence of twelve members of said Jury. Each of said jurors signs his name hereto, this ____ day, _____ month, _____ year. Again, twelve blank spaces for you to sign in event you concur

with this verdict.

"State of Ohio vs Sandra Lockett, Indictment for Aggravated Murder, Count No. 1: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Guilty of Aggravated Murder; and we so further find Sandra Lockett _____ of Specification No. 1." Now there's an asterisk there and it refers to the word "Guilty" and "Not Guilty". When all twelve of you arrive at a verdict upon this particular Specification No. 1, then you will insert in that blank space Guilty or Not Guilty.

It takes all twelve of you to concur. Then you will go ahead and fill in the blank spaces that the Court has previously defined to you.

The specifications are separate considerations and they must be treated separately.

The next verdict is "State of Ohio vs Sandra Lockett, Indictment for Aggravated Murder, Count No. 1: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Guilty of Aggravated Murder; and we do further find Sandra Lockett _____ of Specification No. 2" Again, there's an asterisk there referring to "Guilty" or "Not Guilty", and you will insert that in that particular blank space.

Again it takes all twelve of you to concur in whatever decision you make.

The next, "State of Ohio vs Sandra Lockett, Indictment for Aggravated Murder, Count No. 1: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Not Guilty of Aggravated Murder, but we do find Sandra Lockett Guilty of the lesser included offense of Involuntary Manslaughter; and we so render our verdict upon the concurrence of twelve members. Each of said jurors signs his name hereto this ____day, ____month, _____year. Again twelve blank spaces in event you concur.

The next verdict, "State of Ohio vs Sandra Lockett, Indictment for Aggravated Murder: We, the Jury in this

case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Not Guilty of Aggravated Murder, and we do further find Sandra Lockett Not Guilty of the lesser included offense of Involuntary manslaughter. Again you must fill in all these blank spaces the Court has been reading to you.

The next verdict: "State of Ohio vs Sandra Lockett, Indictment for Aggravated Robbery, Count No. 2: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Guilty of Aggravated Robbery as charged in Count No. 2 of the Indictment."

Again, upon the concurrence of twelve, you sign your name and fill in the blanks, in event you concur with this particular verdict.

The last verdict: "State of Ohio vs Sandra Lockett, Indictment for Aggravated Robbery, Count No. 2: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Not Guilty of Aggravated Robbery as charged in Count No. 2 of the Indictment. We so render our verdict upon the concurrence of twelve members of said jury. Each of said jurors signs his name hereto this ____day, _____month, _____year. Again twelve blank spaces in event you concur.

Now, when you get into your deliberating room, the twelve of you, you will pick one of your members as the forelady or foreman of this particular Panel. That person has no greater authority than any other member of the Panel. It only gives you an Administrator who will allow each one of you to talk, so that all of you can listen without one shouting at one another or speaking at the same time. Every one of you has something to say. You should listen to one another. You should all have the opportunity of speaking in order that you can arrive at the wealth of knowledge that you combined have in your deliberation.

However, you must not discuss or consider the question of punishment. Your duty is confined to the determination of guilt or innocence of the defendant.

In the event that you find the defendant guilty of any crime, the duty to determine punishment rests with this Court and this Court alone. You must not be influenced by any consideration of sympathy or prejudice. It is your duty to carefully weigh the evidence to decide all disputed questions of fact, to apply the instructions of the law as the Court has defined to you. In fulfilling your duty, you must consider all of the evidence, make your finding with impartiality, with intelligence, without bias, prejudice or sympathy so that the State of Ohio and the defendant will feel that their case has been fairly tried.

If this Court has done anything by way of expressions or inflections or any comments that you arrive at a conclusion how this Court feels about this case, the Court instructs you to disregard that. This Court has no right to influence you in any manner in your decision. That's your responsibility, and your responsibility alone.

You will have with you the exhibits, the verdicts for your consideration. In the event that there are any questions that you may have during the course of your deliberations, you will have to submit them in writing. I will then examine those requests with the Attorneys to see whether or not legally I can answer them. There are some questions, I cannot, and other questions I can and we will do so.

You won't have too much time to deliberate because it's approximately 11:15. You will be going to lunch together. You will leave about 20 of; you will be in the custody of the Bailiff and the Jury Commissioner.

When you're on your breaks, and you can have a break any time you collectively desire; when you're on your breaks or at lunch or whatever, when you are separated for a short period of time, you cannot allow anybody to approach you and discuss anything with you. You have to isolate yourself. When you're out, say, taking a five-minute break or having a cup of coffee, going to the water fountain, or restroom, whatever the case may be, you cannot discuss this case with any other member of this Panel. All of your discussions, all of your deliberations must be within the confines of your deliberating room and that's all. Each one of you need the thoughts of the other mem-

bers of this Panel and when you are out discussing it among yourselves, the rest of the Panel loses the benefit of your thoughts. So again, you don't do anything except talk about the weather when you are outside of the jury room. All the discussions have to be within those confines.

All right, ladies and gentlemen, with the exception of Mr. Eggers and Mrs. Stroh, you have been chosen as alternate jurors in the event some misfortune would have taken place to the regular members of this Panel. Fortunately that has not occurred. You are excused. The Court says to you that your lips are sealed. You cannot discuss this case as to how you feel about it until they have arrived at a decision. Then you can talk to anybody. Until then, thank you very much. You are excused.

Ladies and Gentlemen, you may commence your deliberations. Gentlemen, would you see that all of the exhibits are given to the Bailiff.

(Whereupon, the Jury retire to the jury room for purposes of deliberation.)

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(WHEREUPON, the jury having buzzed at approximately 8:27 p.m., all parties being present, the jury enter the courtroom.)

COURT: Ladies and Gentlemen of the Jury, have you reached a verdict?

FOREMAN: Yes, sir.

COURT: Mr. Saal, would you give the Bailiff the verdicts, please.

"State of Ohio vs Sandra Lockett: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Guilty of Aggravated Murder as charged in the Indictment in Count No. 1. We so render our verdict upon concurrence of twelve members of said Jury. Each of said jurors concurring in said verdict signs his name hereto this 3rd day of April, 1975." It's signed by twelve. Gentlemen, would you examine this verdict, please?

Would you, Mr. Johnstone, want the Jury polled?

MR. JOHNSTONE: I do not, sir.

COURT: "State of Ohio vs Sandra Lockett, Indictment for Aggravated Murder, Count No. 1: We, the Jury in this Case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Guilty of Aggravated Murder. We further find Sandra Lockett, Guilty of Specification No. 1. We so render our verdict upon the concurrence of twelve members of said Jury. Each of said jurors concurring in said verdict signs his name hereto this 3rd day of April, 1975." Signed by twelve jurors. Gentlemen, would you examine this verdict, please?

Does the defendant wish to have the Jury polled in regard to these verdicts?

MR. JOHNSTONE: We do not, Your Honor.

COURT: "State of Ohio vs Sandra Lockett, Indictment for Aggravated Murder, Count No. 1: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the Stae of Ohio and the defendant Sandra Lockett, do find her Guilty of Aggravated Murder. We so further find Sandra Lockett, Guilty of Specification No. 2. We so render our verdict upon concurrence of twelve members of said jury. Each of said jurors concurring in said verdict signs his name hereto this 3rd day of April, 1975." It's signed by twelve jurors.

Gentlemen, would you examine this verdict, please.

Does the defendant wish to poll this verdict?

MR. JOHNSTONE: We do not, Your Honor.

COURT: "State of Ohio vs Sandra Lockett, Indictment for Aggravated Robbery, Count 2: We, the Jury in this case, being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant Sandra Lockett, do find her Guilty of Aggravated Robbery as charged in Count 2 of the Indictment. We so render our verdict upon the concurrence of twelve members of said Jury. Each of said jurors concurring in said verdict signs his name hereto this 3rd day of April, 1975." It's signed by twelve members of this Panel.

For the record, all the other verdict forms are in blank.

I'm asking you gentlemen to examine the rest of the

verdicts that were submitted to the Jury.

Does the defendant wish to poll the jury in regard to the Count No. 2?

MR. JOHNSTONE: We do not, Your Honor.

COURT: Has the defendant examined the verdicts that the Court has submitted?

MR. JOHNSTONE: We have, Your Honor.

COURT: Are there any irregularities on those?

MR. JOHNSTONE: None, Your Honor.

COURT: Ladies and Gentlemen of the Jury, the Court will accept the verdicts. They will be duly filed and recorded. The Court wants to express its gratitude and thank you very much on behalf of this Court and its colleagues. We know that these decisions are very difficult. It's most difficult to pass judgment upon another human being, and the Court is well aware of the awesome responsibility that you have assumed in this particular case. You are jurors. You have lived up to the highest expectation that the community has for jurors and this Court wants again to thank you very much for your services.

You may talk to the Attorneys if you so desire. You do not have to talk to anyone. If you wish to talk to this Court, you may just step into my office and I will talk to you. Again, you do not have to talk to anyone, if you do not want to. Thank you very much. You are excused.

MR. SHOEMAKER: Thank you on behalf of the State of Ohio.

COURT: Court is adjourned.

ADJOURNED

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COURT: Be here tomorrow morning so that the Court can follow the regular procedure of ordering a Pre-Sentence Report and also follow the statute in ordering the psychiatric examination and preparation of the mitigation.

I'd like to discuss with you, Mr. Shoemaker and you,

Mr. Johnstone, what's mandatory under the law.

MR. SHOEMAKER: Nine o'clock?

MR. JOHNSTONE: The hearing will not be tomorrow morning?

COURT: No. Have Sandra brought over at 9:00 o'clock tomorrow morning. She will be here at all phases of this proceeding.

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COURT: You may proceed

MR. RUDGERS: This is Criminal Case NO. 75–1–96, State of Ohio vs Sandra Lockett. The defendant is in court today with her Attorneys, Mr. Johnstone and Mr. Bayer. Previously she was convicted by a jury of Aggravated Murder, Specifications 1 and 2, and Aggravated Robbery of the indictment against her.

Since that time the Court, pursuant to statute, has ordered a Pre-Sentence Investigation and Psychiatric Examinations of the defendant. Those have been completed and returned to the Court.

We are in court today for the matter of tte Mitigation Hearing pursuant to statute and any motions by the defendant.

COURT: You may proceed, Gentlemen.

MR. SHOEMAKER: It's my understanding at this point that after conferring with Counsel for the defendant, Mr. Johnstone and Mr. Bayer, that there are five written reports which, I believe, the Court has before it.

The first report was done by Mr. Reinhold of the Summit County Diagnostic Clinic. He is a Psychologist.

There is a report by Dr. Hungerman, who is also a Psychologist. That's dated the 28th of April, 1975.

There are two reports by two Psychiatrists. One of these, dated April 16, 1975, is from Dr. Martin J. Gunter. The other report is by Dr. A. E. Villalba, who made a report concerning this defendant on April 29, 1975.

Finally, there is a Pre-Sentence Report prepared by Mrs. Stella Denton. It's my understanding that the Counsel for this case and their client, Sandra Lockett, would stipulate as to the contents of this report from the standpoint, if the five people whom I have mentioned, who

prepared the five written reports, would come before the Court they would testify in open court in the same manner as prepared in their written workups.

The reason we bring this to the Court's attention is to get the stipulation on the record. These parties would be available to testify, if there's any disagreement, before any other motion for a new trial.

COURT: Mr. Johnstone?

MR. JOHNSTONE: Should I reply to that or go to the motion for a new trial?

COURT: No. I am here to hear the mitigating circumstances. There are five people ready to testify, five professionals. I have been informed that from the State of Ohio that the Defense is going to stipulate that if they were to be called as witnesses that they would testify to the same material and evidence that they have submitted in writing.

MR. JOHNSTONE: We so stipulate.

COURT: You have stipulated to the effect that Dr. Gunter's and Dr. Villalba's reports are to be stipulated, therefore they need not be called; Dr. Hungerman also; and Mr. Reinhold, the Psychologist, need not be called. The report would be accepted, and that's what he would testify as to the contents of the report he has submitted to the Court; and also the Pre-Sentence, Mrs. Denton is here. Are you stipulating as to the Pre-Sentence report?

MP.. JOHNSTONE: Yes, Your Honor.

COURT: All right. The Court will accept the information then at this time.

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COURT: You have another motion before the Court?

MR. JOHNSTONE: The motion for a new trial, Your Honor.

COURT: All right.

(Conference at the Bench, out of the hearing of the court reporter.)

COURT: Before we get to the motion for a new trial, Sandra Lockett, have you consulted with your Attorneys

in relation to these reports that we have just been discussing?

DEFENDANT: No.

COURT: You have not?

DEFENDANT: No.

COURT: Do you concur with their position in regard to stipulating these documents?

DEFENDANT: Uh huh.

COURT: I can't hear you?

DEFENDANT: Yes.

COURT: You do? In other words, what the Court wants to say to you before you answer. The Court says to you that you have the right to have these people that we are talking about, Dr. Villalba, Dr. Gunter, Dr. Hungerman, Daniel Reinhold, and Mrs. Denton appear personally and testify. You have the right to cross examine them in regard to their testimony, if you so desire; or as suggested here by the Prosecutor and your Attorneys, that you will stipulate, you will agree that this is what they would testify to and there's no need for cross examination. Is that what you are saying?

DEFENDANT: Yes.

COURT: Do you understand what the Court has said?

DEFENDANT: Yes.

COURT: Is there any question that you want to ask the Court in regard to this?

DEFENDANT: No.

COURT: Okay. The Court will accept it.

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MR. JOHNSTONE: If Your Honor please, motion for new trial was filed April 9, 1975. Since that time, specifically yesterday, May 1, 1975, an event occurred which in my opinion does have some affect on this case. I refer, of course, to the Court granting the motion for a new trial in the case of James Lockett on what I understand was the failure of the Prosecutor to divulge the name of a possible witness; and on the further ground, as I understand it, that there is newly discovered evidence in the case of James Lockett from this previously undivulged witness.

COURT: Let me set the record straight. The Court will

tell you directly what the Court's ruling was, so that you better understand it.

They filed a motion under Rule 16 to the effect that they have asked for a certain witness and it was not divulged to them so that they could utilize the information that he may or may not have at their trial.

MR. JOHNSTONE: Yes. That was my understanding.

COURT: All right. Based on the fact that it was not divulged, I feel that Rule 16 was applicable only regarding—the Court felt that it was material either to the guilt or punishment of the defendant, Mr. James Lockett in that particular case.

We also had a unique situation in that case. This particular person was specifically requested at the arraignment; and everything was said to identify Mr. Dixon, Edward Dixon; but it was specifically requested that his name be revealed, so there was a continuing request for his name. It wasn't until after the trial was over that the name finally came into consideration—but that was after the trial was completed.

Based on request and the situation as it developed, the Court heard testimony and felt that since there was a specific request for him, and since that name was not given to the Attorneys for James Lockett, the Court felt that Rule 16 was applicable in the area in which the Court has just discussed and therefore am granting him a new trial. I am not saying that the information was favorable. I am not passing judgment on his testimony. The Court just felt that since the request was made, that the jury should have had the opportunity at least of hearing from this man, if the defendant desired to place him on the stand. They indicated to the Court that they were and wanted to, and for those reasons the Court granted a new trial—not for newly discovered evidence as such.

MR. JOHNSTONE: Well then, my information that that was part of your ruling is—

COURT: No, I did not.

MR. JOHNSTONE: —obviously erroneous.

COURT: That's correct, and the entry will so reflect. Anything else?

MR. JOHNSTONE: Yes.

COURT: Is this your understanding, Mr. Shoemaker?

MR. SHOEMAKER: This is the first understanding this Court has given me as to the exact specific points it made.

COURT: The Court gave you a run-down as to its reasons. I may not have spelled it out, but the request was made under Rule 16, and under Rule 16 the Court acted.

MR. SHOEMAKER: I might for the record, I would take exception to the Court's finding in this particular case. It was not done yesterday since I found out this morning exactly what the Court's ruling is and why I would take exception to that. I don't feel those were the exact circumstances, even though the Court and I differ on this.

COURT: That's what makes lawsuits.

MR. SHOEMAKER: That's correct, Your Honor.

COURT: Now, you may proceed.

MR. JOHNSTONE: I also have been informed—I have also been informed, possibly erroneously, I do not know; that the Prosecutor yesterday in the hearing on James Lockett admitted that there was a divergence in his testimony on a rather important point from that which he gave in the case of—

MR. SHOEMAKER: Are you talking about Mr. Dixon or James Lockett?

MR. JOHNSTONE: Mr. Lockett.

MR. RUDGERS: Your Honor, if I might, one moment. The defendant filed one motion for new trial, one ground for a new trial. Unless we receive written notice on other grounds, the only one the Prosecution is prepared to go forward on is the one filed by written notice.

COURT: Let's—let me hear this.

MR. JOHNSTONE: On that particular point, if anything is newly discovered since the motion was filed as late as yesterday, certainly I wouldn't be expected to come into court with a modified motion for a new trial to be heard today.

COURT: Go ahead.

MR. JOHNSTONE: All right. I was informed, if I may start again, that there was a divergence in Mr. Parker's testimony during the two times that he testified in these cases, and it was on a rather important point; that is, to

whether or not Mr. Cohen, the deceased, actually grabbed the gun that was being held by Mr. Parker and which was the gun from which the bullet which killed Mr. Cohen came and that the Prosecutor admitted that discrepancy.

COURT: When was this?

MR. JOHNSTONE: Your Honor—

COURT: Are you talking about yesterday?

MR. JOHNSTONE: Yes.

COURT: There was no discussion about Mr. Parker's testimony yesterday.

MR. SHOEMAKER: No; discussion about Mr. Dixon.

MR. JOHNSTONE: Then I again have been misinformed. I apologize to the Court.

COURT: All right. Are you ready to go on?

MR. JOHNSTONE: On this motion, the one ground that we have here, this record in this case is replete with the efforts of Counsel to get Miss Lockett to take the stand. It's also replete with her refusal to take the stand. At that time I was under the impression that that was solely due to the dominance of Sandra Lockett by her mother and possibly others, and that she was influenced by them, and by reason of that did not take the stand in her defense; and by reason of that the Jury was not presented with anything whatsoever except the meager amount I got from Mr. Parker on cross examination to refute the State's case. I think that alone would indicate that Sandra Lockett, although it was partially her fault, could not and did not under those circumstances receive a fair trial.

COURT: I miss the point? She refuses to take the stand.

MR. JOHNSTONE: That's correct.

COURT: You are under the impression someone is influencing her, therefore she didn't receive a fair trial?

MR. JOHNSTONE: That is correct.

COURT: Okay.

MR. JOHNSTONE: I can reduce that to a syllogism, if Your Honor wants me to?

COURT: I wish you would.

MR. JOHNSTONE: When one appears in open court—this is a major premise. When one appears in open court and when one is asked specifically on the point as to whether or not they are acting under their own free will,

one presumes that an affirmative answer is conclusive. That's the major premise. The minor premise is that if full opportunity is given to such person to reply without pressure in open court, then the reply could be accepted. A conclusion would be that that is final and binding. Now that is a valid conclusion, based on that syllogism, but I don't think it's the truth.

Now, in logic there's a difference between validity and truth. In logic a proper conclusion in accordance with the promises presented is a valid conclusion but not necessarily the truth, for the simple reason that one of the premises may be in error and I think in this case, as was demonstrated conclusively in the record, formally in the record, that Sandra Lockett was not acting on her own free will, that she was under the dominance of her mother and possibly others whom I will not name; and that she did not act of her own free will.

Therefore, despite the fact that the record is replete with instances indicating that Mr. Bayer and I attempted to get her to take the stand in her own defense, at least to give us some mitigation or some opportunity to make a claim that what the State presented was not the truth. She did not do so.

Now, in addition to that, I find from the report of Mrs. Denton's Pre-Sentence report something which I did not know before and which Sandra Lockett did not tell either Mr. Bayer or me at any time during the numerous conferences we had with her prior to coming into court to dispose of the case. That is that she lacked confidence in her Attorneys. She never told us that. She never indicated that.

Now, under those circumstances and for the same reason previously announced about being dominated by a stronger personality than hers, for that reason she did not, in my opinion, have a fair trial simply because she lacked confidence in her lawyers.

Now I don't want to get these two issues mixed up, but the reports of the various Psychologists and Psychiatrists and so forth are before the Court and the Court has knowledge that Sandra Lockett was in fact a drug addict, that she was attempting to kick the habit by methadone;

and I presume the Court is aware of the affect of methadone which it produces "High", as does heroin. That again indicates she was not acting under her own free will.

I think that the interest of justice would indicate that she be granted a new trial, that her present Counsel be removed from the case, and that in that trial she be defended by other Counsel appointed by the Court, or by other Counsel which she or her family may procure. I really do think that the interest of justice requires it.

Now, that's all I have to say on the motion for a new trial.

COURT: Mr. Bayer, is there anything you have to say?

MR. BAYER: No, nothing to add.

COURT: Sandra Lockett, is there anything you have to say?

DEFENDANT: No.

COURT: The Prosecutor?

MR. SHOEMAKER: May it please the Court and Counsel for the Defense here, first of all we have to assume, I think, that this person is of the age specified in all of the reports. She's of legal age. Secondly, I think we have to take into consideration or ask the Court to, the fact she has negotiated her life, while admittedly some of it not good, she's been able to function. She went fairly far in school. As I understand, prior to this episode she got herself involved in here at 42 E. Market Street, she was in fact involved in furthering her schooling. These things point out that she is able to make a mature judgment. Couple this with the fact, as Mr. Johnstone already brought out, the Psychiatric and Psychological evaluations here in front of the Court, everyone who is up for trial on a serious offense like this and has relatives who come down to lend moral support or whatever type of support relatives would lend, especially parents are bound to have some influence one way or the other on the defendant.

I think the record here indicates to me that this mother just from the bare-bone facts that we have here has not influenced her in any degree, any more than what any other relative or parent would do in any case.

Sandra Lockett is quite capable at her age and development, even though as reports indicate she might

not have the same level of functional ability as Mr. Johnstone or some of the other people might have, but she's able to function, able to make decisions, she made a decision and elected clearly, I think, to get on that stand and tell her story or not tell her story.

Mr. Johnstone brings up the subject of drugs. We have no evidence from the Drug Clinic whatsoever about this. I would agree that Sandra Lockett did have a heroin habit. Prior to the actual trial in Sandra's case, I did have occasion to discuss Sandra's heroin habit with the people at the Akron Drug Clinic down there at the Old Library. It was my impression after discussing with them, plus my knowledge of heroin, that at the time this trial commenced, at the time she was before this Court, by the time she was ready to make the decision whether she wanted to get in the chair or not, get in the witness chair, she had not had heroin. She had even stopped the methadone treatments. I don't feel this drug argument is a valid argument. If she had been tried immediately after arrested, while still on methadone, perhaps still on heroin, that might have been a reasonable point to bring up. I don't see how it is now. I just cannot see—her age and ability, her living in the world—how this point after the fact can come forward and say this. Anybody can say this. There's no evidence other than the speculation of Mr. Johnstone. Not to demean Mr. Johnstone's argument, but this is a point any defendant can make, unduly influenced by my brother or anything. She counseled with them. She talked to them back and forth, made decisions when the Court has asked her and when her mother wasn't present. She wasn't present all these times and she's made decisions on her own. She's not a departed person. She's completely under the reins and controls. She's able to make decisions. I think she made the decision on her own. I don't think undue mental pressure is grounds for reversal.

COURT: Mr. Johnstone, I neglected to tell you—when I made the decision yesterday in regard to the new trial, another motivating factor, and that is I was informed to the effect that you received the name of Edward Dixon in your List of Witnesses. Is that correct?

MR. JOHNSTONE: We did.

COURT: I meant to add that as to my reasons why I enforced the Rule 16. So your situation is not the same.

MR. JOHNSTONE: I don't raise that point.

COURT: All right.

MR. JOHNSTONE: I don't raise that point.

COURT: The Court has done this. The Court has evaluated all the reports in this particular case. The Court is going to deny your motion for a new trial. The circumstances in your case are a lot different.

MR. JOHNSTONE: May we have exceptions?

COURT: You may have your exceptions in everything I do. You may have your exceptions and follow the legal procedure that you must.

The Court will quote the law. Section 2929.04 says in part: "The death penalty for aggravated murder is precluded when considering the nature and the circumstances of the offense and the history, character and condition of the offender, one or more of the following is established by a preponderance of the evidence." And then it goes on to recite three mitigating circumstances that precludes the death penalty, "one being the victim of the offense induced or facilitated it; two, it's unlikely that the offense would have been committed but for the fact that the offender was under duress, coercion or strong provocation; and three, the offense was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity."

The Court has reveiwed all of the evidence in this particular case, all of the reports submitted—by Dr. Gunter, Dr. Villalba, Dr. Hungerman, and Mr. Reinhold. Also, the Court has read the Pre-Sentence report.

The Court is now in a position to pass judgment and the Court would like to ask you, Mr. Johnstone and Mr. Bayer and Miss Lockett if there's anything you have to say as to why judgment should not be pronounced in this case?

MR. JOHNSTONE: Yes.

COURT: You may.

MR. JOHNSTONE: I wish to argue concerning the reports.

COURT: You may proceed.

MR. JOHNSTONE: Your Honor, you will recall that I asked Your Honor's assistance to help me get the reports from the Akron Drug Abuse Clinic, and that I presented a journal entry to Your Honor, which ordered Mrs. Wells at the Akron Drug Abuse Clinic to give me copies of their reports, including psychological evaluations, evidence of the times Sandra Lockett came there and what she got, and so forth. Your Honor will also recall that I asked you if those would be acceptable in court? And at this time I present them. Have you seen them?

MR. SHOEMAKER: I have not.

MR. JOHNSTONE: Should they be marked?

COURT: Yes, please.

(Defendant's Exhibits A thru CC, Drug Clinic reports, are marked.)

MR. SHOEMAKER: We have Exhibits A to CC as Defendant's exhibits. At this point I would also indicate that the State has two exhibits. Number 1 would be the Pre-Sentence Report by Mrs. Denton. Exhibit 2 would consist of Mr. Reinhold's report, Dr. Hungerman's report, Dr. Villalba's report and Dr. Gunter's report. Is that correct?

MR. JOHNSTONE: That's correct. The Akron Drug Clinic report has been marked in evidence as Defendant's A thru CC inclusive. They conclusively prove that Sandra Lockett was a heroin addict, that she was taking treatment on her own volition at the time of the homicide and had been for some time prior thereto.

Your Honor will also recall that one of the State's witnesses testified that Sandra Lockett went to this Akron Drug Abuse Clinic the morning of this shooting to get some methadone. In other words, the State's testimony itself indicated that Sandra Lockett was under the influence of drugs at the time this occurred. Whether that drug was heroin or methadone is immaterial. It was a drug having an impact upon her mind.

Now, the various reports of the court-appointed professionals—psychologists, psychiatrists, so forth, which are marked in evidence as State's Exhibits 1 and 2, themselves indicate that Sandra Lockett was not of a ma-

ture and responsible intellect. State's Exhibit 1 refers to an intelligence report evaluation showing her just four points above the level of a moron.

COURT: What was the intelligent quotient that you are talking about?

MR. JOHNSTONE: It's the California Short Form Test, referred to on page 8 of Mrs. Denton's report which is in evidence, marked in evidence here as State's Exhibit 2. This is a variation—I happen to know, as a former educator,—of the Binet Test which has been used for years and which has been modified from time to time; and I can state—I can make a professional statement that the schedule of grading is the same in the California Short Form Test as in the Binet. That shows that she had an I.Q. of 76. The cutoff point at the top of the scale as far as moron is concerned is 71.

COURT: Let me ask you this. Have you read the new Psychiatric Manual in relation to the Diagnostic and Statistical Manual for Disorders?

MR. JOHNSTONE: No.

COURT: May I just say this to you. Mental retardation and mental deficiency under the law are synonymous. Borderline mental retardation, 69 to 83. Mild mental retardation the Intelligence Quotient is between 52 and 67. Moderate mental retardation is 36 to 51. Talking about Intelligence Quotient.

MR. JOHNSTONE: I don't know.

COURT: In that report you will also see she had an I.Q. of over 100. Now if you take the standard for the normal intelligence, you take an area of about 100.

MR. JOHNSTONE: Well, I don't know.

COURT: It vacillates, I think, between 94 and 110.

MR. JOHNSTONE: I don't know that scale. I don't know the significance of that scale. I can only relate to scales with which I am acquainted.

COURT: That's true.

MR. JOHNSTONE: Which are the Binet form.

COURT: But you also see in that report they talked about 106 at one time.

MR. SHOEMAKER: 107.

MR. JOHNSTONE: And 87 at another point. Well, in

any event that along with the drug habit, I think is extremely indicative of the fact that Sandra Lockett was not acting as a normal responsible adult. She did not have the intelligence, temperament of character to do so. I wish to refer specifically to various portions of State's Exhibit 2, Mr. Reinhold's report dated April 8, 1975 on page 1. He refers to the impact that the mother had on Sandra Lockett; that she was a very domineering, aggressive individual who attempted to control the Defense Counsel and did effectively control what Sandra did during the trial.

Further on in that report Mr. Reinhold refers to the time that Sandra was so confused that when she was attempting to get in the army as a matter of identification to the Recruiting Officer she offered her Methadone card. In other words, this woman had periods of lucidity, I'm assuming; and other periods when she was under the dominance of drugs. And that is important because she was under the dominance of drugs the morning that this homicide was committed, as is indicated by the State's own—I shouldn't say under the dominance as is indicated by the State's own testimony but the fact is proven by the State's own testimony that she did go to the Akron Drug Abuse Clinic to get a drug, Methadone, the morning of this homicide.

Mr. Reinhold also refers again on page 3 of his report that she frankly said that she had snorted heroin and that she used marijuana. As a matter of fact, the State's witnesses establish the fact that the night before this homicide most of the group was smoking pot which I understand is marijuana. Not only did she have her mind poisoned by heroin or Methadone, but also by another hallucinogenic drug pot, marijuana. This is a picture of a person who has had her mental processes so corrupted at this particular point, 12 to 24 hours, by drugs so that she was not responsible.

You might say as a matter of ethics that no one is entitled to go out and pollute themselves with drugs, whether it's alcohol or heroin or marijuana so that they are not responsible for what things they do, but that is not the proper value to put on that because we are not here to prove that she was not guilty of this offense. We are here

in mitigation. And I think she falls under Number 3 of that section, which, Your Honor, you have read. I don't claim she falls under Number 1 or Number 2, just Number 3. And I'm not claiming that Sandra Lockett is insane within the meaning of the law. That's not necessary, but I am saying that Sandra Lockett is that class of defendant which falls—

COURT: Psychosis or mental deficiency?

MR. JOHNSTONE: Mental deficiency. Now, there's a difference, I know, between psychosis and absolute insanity. There's various kinds of psychoses. I don't know how these doctors try to differentiate between the 50 or 60 different kinds of psychotic minds, but certainly Sandra Lockett exhibits evidence of psychosis. Certainly, Sandra Lockett indicates evidence of neurosis. I think even neurosis would entitle Your Honor to find that she falls within that third exception in that statute, and certainly neurosis can be—or neurotic behavior can be produced by drugs: pot, heroin or Methadone.

We should not be confused by the fact that Methadone is used as a method of curing one of the heroin habit, and from that come to the conclusion that Methadone itself is not a drug. Methadone is a drug. In fact, Sandra Lockett told us, Mr. Bayer and I, that it makes a compulsive habit too, just as heroin does. I don't know. I didn't know that. Maybe that's the affect it had on her, but in any event she felt that she had to have it. And evidently the Akron Drug Abuse Clinic felt she had to have it because they treated her over a period of time.

Now, in Dr. Hungerman's report, which is a part of State's Exhibit 2, on page 1, we find this: "Sandra is functioning in the low average range of intelligence." Now, that coupled with the undoubted affect that the various drugs that she imbibed in had at her low average intelligence indicates that she was not a normal mind acting in a normal fashion in this particular circumstance. She was a drugged mind. She had a psychosis in my opinion and I would not get on the stand and presume to testify that she was psychotic. I'm not such a professional, but she did have a psychosis. I honestly believe that. If not a psychosis, certainly a neuroticism which would entitle her

to be considered as within the exception of Number 3 of that statute.

In that same report we have two or three indications by Dr. Hungerman that Sandra Lockett just wouldn't do such a thing as to plot what she was accused of doing. He says on page 2, "The dominant theme in her personality seems to be a need to nurture others. She wants to be kind, happy, loving and supportive. She doesn't want disagreement, discord, anger, hurt, or unnecessary pain in her relationship with others.

Now, that in itself indicates that she was under the dominance or affected by—

COURT: Except one thing. You didn't conclude that sentence. He doesn't find her to be mentally—

MR. JOHNSTONE: I concluded the sentence.

COURT: I'm talking about the paragraph where he finds her not to be mentally deficient.

MR. JOHNSTONE: I know. I'm pointing out the things that he used to come to that decision and with which I disagree.

COURT: All right. I understand.

MR. JOHNSTONE: Now, that finding alone indicates that Sandra Lockett, even if she did what the State says she did was under the dominance of these other people, Parker, Dew, and James Lockett.

Maybe this woman the State presented—I've forgotten the name?

COURT: Baxter?

MR. JOHNSTONE: Baxter. Further on in that report Dr. Hungerman said—he cites something else and says that suggests that there is a possibility of an organic deficiency. Now that word is misspelled, but he means organic deficiency. And he goes on and says something else, which is indicative of the fact that Sandra Lockett was not acting on her own free will, if she had a mind capable of expressing and acting on free will.

He goes on to say in her favor: "It should be noted that Sandra's contention that she did not participate in a plan to murder anyone is very supportable."

Now, again you may say well I'm arguing against her complicity here. I'm not. I'm not saying that the jury ver-

dict was not based on evidence. I'm saying that in view of this finding of Dr. Hungerman in her favor, "it should be noted that Sandra's contention that she did not participate in a plan to murder anyone is very supportable", I'm saying that that indicates that she was under the dominance of either person's more positive responsive personalities than her own and/or under the dominance of drugs.

Again I'm not arguing that that is a reason for finding her not guilty of the crime with which she was charged. I'm saying that that puts her under exception 3 of that particular statute Your Honor read.

Now Dr. Hungerman goes on, page 3 of his report, and says, "It is easy to believe, for example, that she would not want her friends to rob a store."

And then, "Finally, if she is to be returned to society, her prognosis for rehabilitation is very favorable."

Dr. Hungerman evidently is not talking about a vicious criminal. Dr. Hungerman, despite his conclusion that she's not psychotic, is talking about an inferior mentality, talking about a mentality dominated by others, talking about a mentality corrupted, diseased and possibly dominated by drugs. All of that brings Sandra Lockett within Number 3 of that statute, the exception.

I respectfully submit, Your Honor, that you would not be tainting or corrupting our concept of justice by finding that Sandra Lockett is one of that class of persons that the legislature has said in that statute should not be sentenced to the electric chair.

Now I am very jealous of my reputation. I do not believe in the seizing upon all of the technicalities which have unfortunately in my opinion grown up in our present body of law concerning the protection of people accused of crime. But I do believe that when the legislature itself, probably when they passed the law having in their mind, their collective mind, some reservation about the morality of capital punishment provided an out that that provision should be liberally interpreted for the benefit of the accused.

Now, in making this plea for Sandra Lockett, I don't want this Court to get the idea that I condone, that I approve of, that I support—or that I support the actions of

those who committed this heinous crime.

Society, however unfortunately, in my opinion, is more or less condoning things of that sort now, or certain segments of our society are. I'm not one of them.

About 125 years ago a great philosopher by the name of Protagoras first advanced the thought that all societies devise their own code of ethics and their own cultural values. What he was saying, in other words, that everything is in a state of flux and in this frenetic world, believe me, the state of flux has been accelerated to the point where what may be true today may not be true tomorrow. I cannot accept; I'm sure Your Honor does not accept a lot of things that the American public now accepts, or at least we'll say segments of the American public now accept. That's not your ethics. It's not my ethics. But I do say that in accordance with this general, apparently permissive philosophy which is now extended in our society, that we should give credence to the efforts of our legislature to cling to the old ethics, the old morality and at the same time trying to, we will say, become more "modern" when they make an exception as they have done in Revised Code Section—

COURT: 2929—

MR. JOHNSTONE: I think you could in all good conscience and with perfect logic, Your Honor, find that Sandra Lockett is one of that class of persons which falls within that particular exception. Thank you.

COURT: We'll take a ten minute recess, the Court will make a ruling.

RECESS

MR. JOHNSTONE: Your Honor please, I beg the Court's indulgence to present an additional thought, for what it may be worth.

COURT: Go right ahead.

MR. JOHNSTONE: This is admittedly a highly controversial matter. I indicated in my argument that I disagreed to some extent with modern ethics; I disagreed with a lot of the changes which have been made and accepted be-

tween my generation and the present generation of practitioners of this profession, but I do honestly question the morality of sentencing one of a group who have committed a crime to the electric chair when the triggerman, who actually caused the death of the deceased, has been permitted to escape such penalty by reason of an agreement with the Prosecutor to testify on behalf of the State against the other three defendants: Dew, James Lockett, and Sandra Lockett.

I have heard the pros and cons of that from numerous individuals, including lawyers, and I am honestly of the opinion that expediency and even pragmatism does not justify such an action.

COURT: Anything else?

MR. JOHNSTONE: Nothing, Your Honor.

COURT: Anything from the State?

MR. SHOEMAKER: Just briefly, Your Honor.

COURT: Go right ahead.

MR. SHOEMAKER: Mr. Johnstone has submitted to the Court these exhibits there of the drug reports of Sandra Lockett. I can only say I didn't have the time to check with the people who made the results of the reports and I would agree that she probably has been on Methadone. There's no question about that. No question she might have been on heroin at one time or another. I don't think there's any way of knowing even from those reports whether she had any drugs—we have to assume she didn't—I am saying extra drugs the day this happened.

If those reports are factual, they do point to her taking the drugs. The point under mitigation under Item Three does not provide for that particular type of offense. Admittedly, it might go to affect one's behavior. It does not prescribe in any way that I can read into mitigation of Item Three.

For those reasons I would ask that those not be considered. They don't fit into this. The Psychologist and Psychiatrist were aware from the interviews with her and the written work-up, she was in fact involved with drugs. It didn't affect their decision either to psychosis or mental deficiency. Of course, it's a two-part test, as the Court is aware. Even if she did have these things, as Mr.

Johnstone said he believed, the psychosis, I don't think the psychosis in any way could be shown to be due to be the primary cause of the offense. I just don't see that it's there. Thank you.

COURT: Is there anything you have to say, Miss Lockett, as to why judgment should not be pronounced in this case? Anything at all?

MR. BAYER: Did you hear the Judge?

DEFENDANT: No.

COURT: Anything you have to say as to why judgment should not be pronounced?

DEFENDANT: No.

COURT: The Court is in a position to make a pronouncement in this particular case.

The Court finds that the evidence is overwhelming in that there was no mental deficiency or no psychosis—this was not the primary product of psychosis or mental deficiency as required by the law. Therefore, the Court has no alternative, whether the Court likes the law or not, the Court has to enforce the law as he sees it and as he interprets it, and the Court will do so. Each case is different, and each case has to rest on its own merits.

Therefore, it's the order of this Court, conforming to the verdict of the jury, that you be taken to the Summit County Jail, and there safely kept and within 30 days to be conveyed by the Sheriff of Summit County to the proper institution, and within the walls therein and within a certain enclosure prepared for this purpose, and under the direction of the Warden you shall be put to death on September 5, 1975, having a current of electricity of sufficient intensity to cause the death to pass through your body, as provided by the laws of the State of Ohio for the crime of Aggravated Murder in causing the death of one Mr. Cohen.

In regard to the Aggravated Robbery, the Court shall impose a sentence of seven years. It shall run concurrently. Pay the costs of prosecution in this particular case.

Anything else, Gentlemen?

MR. SHOEMAKER: No, Your Honor.

COURT: The Court has to apprise you of your constitutional rights. The Court will do so now, in that Mr.

Johnstone and Mr. Bayer will be your Attorneys for your appeal purposes. In event that you need any transcripts or any costs involving this appeal, these shall be furnished to you free of charge, anything that you need in regard to your appeal. That's what the law says you are entitled to, and you shall have it.

Anything else?

MR. JOHNSTONE: No, Your Honor.

COURT: The Court stands adjourned

***

COUNSELING PSYCHOLOGY SERVICES
270 Storer Avenue
Akron, Ohio 44302
Phone 836-3824

April 28, 1975

Re: Sandra Lockett

Sandra was referred for a general psychological evaluation to determine if there were mitigating factors to be considered in her sentencing investigation.

The evaluation was conducted in the County Jail during April, 1975. It consisted of a clinical interview, the Wechsler Adult Intelligence Scale, the Minnesota Multiphasic Personality Inventory, and the Thematic Aperception Test.

During the interview Sandra was very pleasant and cooperative. She established rapport easily and displayed exceptionally appropriate emotional affect. She seemed to be very honest and forthright. She also seemed overly confident and optimistic and nearly too well adjusted to the seriousness of the circumstances.

Test Results

Intelligence

Sandra obtained the following WAIS scores: Verbal IQ-81; Performance IQ-87; and Full Scale IQ-83. Her scaled scores were:

Information	7	Digit Symbol	12
Comprehension	6	Picture Completion	7
Arithmetic	7	Block Design	6
Similarities	4	Picture Arrangement	11
Digit Span	10	Object Assemble	5
Vocabulary	6		

Sandra is functioning in the low average range of intelligence. Her digit span score indicates that she is capable of attending adequately in short term memory situations and doesn't seem to be disturbed by any internal anxiety.

Her low similarities, block design, and object assembly scores indicate the presence of a handicaping condition in

those perceptual processes involving abstract reasoning, nonverbal perceptual organization, and generalizing ability. The pattern does not differ enough from her overall ability to suggest a mental defect. However, it does suggest an emotional inclination to see things in a simple, utilitarian, descriptive way. There is a certain immature or childlike quality to this perceptual style.

The picture arrangement and digit symbol scores suggest that Sandra has a relatively adequate memory.

Personality

The MMPI and TAT results are within the normal range, except for a high 6, and indicate that Sandra is not psychotic, neurotic, or functioning with a character disorder. The high six may indicate the existence of ill feelings, which Sandra readily admits exist toward her brother and Al Parker. She is capable of anger, resentment, and mistrust of others. These dynamics appear to be well controlled and within normal bounds.

The results portray Sandra as friendly, well socialized, optimistic, sensitive, honest, sincere, good humored, rational, good emotional affect, and honestly aware of herself.

The only measured flaws were the negative feelings already mentioned, a carelessly optimistic outlook, a tendency to be simpleminded as opposed to insightful, and a lack of inclination to accurately assess the negative implications of a negative situation—in her mind things always turn out good.

Evaluation

It may easily be hypothesized that if Sandra were from a different socio-economic background she would never have had difficulty with the law.

In her own words her problems may exist to a large degree because "I'm just too nice."

The dominant theme in her personality seems to be a need to nurture others. She wants to be kind, happy, loving, and supportive. She doesn't want disagreement, dis-

cord, anger, hurt, or unnecessary pain in her relationships with others. Her defense mechanisms seem to turn difficulties into hopeful optimism, failure into acceptance, destructive hurt into denial, and disaster into dissociation from pain accompanied by a rationalized optimism. The "Pollyanna" outlook might summarize this dynamic.

Her intelligence is adequate to deal with this society. However, it may be hypothesized that her need to avoid pain has resulted in a handicap. She is deficient in her ability to generalize concepts, and to perceptually organize visual material. That suggests that there is a possibility of an organic deficiency. It also suggests that Sandra would probably not be aware of the predicted ramifications and consequences of some verbally presented concepts. She tends to deal best with simple, familiar ideas.

Unfortunately, considering her situation, this condition is probably not a mental deficiency. Rather, it is a handicap which may hinder her functioning in some situations until she can compensate for the handicap.

Also, the evaluation doesn't support the presence of a deficiency based on emotional or personality factors.

In her favor, it should be noted that Sandra's contention that she did not participate in a plan to murder anyone is very supportable. Her personality structure not only is unlikely to result in unnecessary anger or violence, but is in fact oriented against acting out or hurting. It is very easy to picture her discouraging any wrong doing which would hurt anyone, especially someone she cares about. It is easy to believe, for example, that she would not want her friends to rob a store.

Finally, if she is to be returned to society, her prognosis for rehabilitation is very favorable. At present there is no special program which would seem to be needed.

S/____ _____
Michael Hungerman, Ph.D.
Psychologist

SUMMIT COUNTY PROBATION DEPARTMENT
INTER-OFFICE MEMO

To

From Daniel Reinhold Date April 8, 1975

Re: Sandra Lockett—Page One
Date of Birth: 5/18/53
Date of Interview: 4/7/75

Sandra is a black female who is a little above average in height and has a rather average build. Sandra is an attractive female who is quite feminine throughout the interview. She was reserved, always had a slight smile, but was very quiet. She gave adequate answers to questions asked of her, and good rapport seemed to be established between her and myself.

Sandra said she was born in Birmingham, Alabama; but when she was about six weeks old, the family moved to Akron. She feels that she has really lived in Akron all her life. Sandra described her father as being a well-respected individual whom everybody loved. She said that the father cooked for the family quite frequently, and this was a very pleasant experience. She believed that her father was happy all the time, when he was not sick. He is disabled because of a back problem.

Sandra said that she related well with her father, and he disciplined her by sitting her down and talking to her about what she had done. She did admit that when she was much younger, the father spanked her; but Sandra did not feel that this was a frequent occasion. She said that her father gave her anything that she asked for. Sandra remembered going fishing with her father and doing "stuff like that".

Sandra described her mother as being a very sweet lady—very dedicated to the church. She felt her mother was very loveable, and Sandra could remember having no problems with her. The mother also used to whip her, when she was young, as a means of punishment. Sandra could remember having no problems with her mother. Sandra admitted that she ran away once from home to find her sister who had also run away, and she then got lone-

some and came back home to be with her family. Her sister ran away because she wanted to "be grown-up". Sandra reported that she did many things with the mother, for they were both in the same organizations in church and other social groups.

Sandra felt the mother and father related well to each other and had a very good relationship. She claimed they did not fight or argue. She felt she had a very close relationship with her sister, and there were no problems.

It was reported that during the trial of Sandra, the mother was a very domineering, aggressive individual who attempted to control the defense counsel and did effectively control what Sandra did during the trial. It is my impression that the defense counsel wanted to be relieved of this case because of the strong, forceful mother. This is not the type of mother that Sandra described in my interview.

Sandra said she went to Allen and Crosby Elementary Schools, West, Jennings, and Thornton Junior High Schools, and Central, Hower, and North High Schools. After she left school, she went to business college for two years. She moved from Allen to Crosby school because the family moved. Other moves were made because she became engaged in fights with girls at school. She stated that the girls stole things from her and broke into her locker, and this caused friction among the girls. Sandra said she asked to be changed and sent to Jennings because of this difficulty. She also described Thornton as being "too rough" and didn't like school there. In high school she had some difficulty because she flicked school. She also became pregnant while at North and for this reason couldn't finish school.

I asked how she liked school, and Sandra stated that she loved school but did admit that she flicked quite often. She felt it was "cool to flick with my friends". She placed the responsibility of her absenteeism onto her friends, for "I did what they did". Sandra never failed any grades and usually obtained B's and C's in most of the subjects she took. She did admit that she was expelled and suspended several times but couldn't remember how many times. Most of her suspensions came through fighting with other

girls. Sandra felt she had many friends at school. She also had a few teachers whom she liked. These were the teachers to whom she could talk. She was on a volleyball team and in the choir.

As mentioned before, Sandra quit school because she became pregnant. She did not like being dropped out of school and often looked forward to returning to school.

Sandra did get married, although she didn't like the idea of being married. She really didn't want to be married but felt that she had to do this because she was pregnant. She was married for about eighteen months. Sandra said: "I just couldn't take him." She felt that their relationship with each other was "O.K.", but she didn't like the fact that she could not have everything she wanted. Sandra stated that she was used to having everything but couldn't, while living with this man, for he was not a good provider. Sandra got into trouble by forging a check to pay for a pair of shoes. At the present time, she and her husband are still separated; although Sandra, when she gets out of jail, wants to get a divorce and marry her boyfriend with whom she has been going for several years. Sandra's child is being taken care of by her mother.

Sandra, because of the destitute situation in her marriage, went to work at Chrysler. She has worked for Chrysler for over four years. She likes her job there very much. While working at Chrysler, she entered into business college. She would go to business college from eight to one and then work from three to eleven. Later on, she switched her shifts and went to school in the evenings. Sandra said she tried twice to get into the service. The first time she passed the entrance exam, but the service wanted her to have somebody adopt her child before they would accept her, and she wouldn't do that. The second time she attempted to join the service she used her methadone card as an identification, and the service officer felt that she was a "dope junkie" and did not approve her application.

Sandra is accused of aggravated murder. She said she met Al Parker and Earl Dew in New Jersey, and she returned with them to the Akron area. She stated that Earl wanted some money and was planning on leaving the next

day, so they went to the pawn shop to pawn the ring. Sandra stated that she stayed in the car while the three men went into the pawn shop. Al Parker came out and got into the car, and she drove Al to her aunt's house. She still didn't know what went on. They stayed at the aunt's house for a while and finally left in a cab. When they got into the cab, there were police all around the home. She stated that Al tried to give her the gun at this time, but she didn't take it.

Sandra said that during the trial the prosecution tried to point out that she had planned the robbery with the other men. She said that she had no knowledge of the robbery and didn't really want to go along with them to the pawn shop. She didn't even know that her brother had a criminal background; and if she had known that, she wouldn't have gone along with them. She felt that Al Parker turned her in because Al Parker stated that she called the police on him.

Sandra states that she smokes about one pack of cigarettes every three days. She drinks [illegible] she goes out with her friends to be sociable. She [illegible]snorted heroin" and has been to methadone clinic to break this habit. She has used marijuana "every now and then". Sandra stated she had her first sexual experience when she was fifteen. This was when she became pregnant. She is going steady with a man now and has frequent sexual experiences with him. This is the man she wants to marry.

Sandra has been to the hospital for surgery. She had cysts on her ovaries and had these cysts removed. She has hobbies of skating, bowling, and horseback riding. She does not dream and cannot ever remember having any nightmare. "I sleep when I go to sleep."

Sandra, if she could have three wishes, would like to go into the service; for then she could become better educated and could travel at the same time. Secondly, she'd like to be a legal secretary; thirdly, she'd like to live any place but in Ohio. She does not want to live in the same state in which she was raised. Sandra, if she had to be an animal, would choose to be an Afghanistan Wolfhound because she loves them, and dogs like to be loved.

Sandra said that she "guesses I am too nice". She said

that she does fight once in a while, but she does feel like she doesn't get angry very often. She feels self-motivated. She believes that all people seem to like her. Sandra does not feel that she has any enemies at this time.

Sandra stated that she went to trial in this case because she did not want to sign any papers in regards to any plea bargaining. She felt that she was innocent, had no connection with the murder, and really didn't know about it until she went to the police station with Al Parker when he reported the incident. She could not remember the possibility of the crime being discussed before the incident, even as a joke while driving down to the pawn shop.

Sandra seems to be well oriented in all spheres and has good recall for both recent and remote events. No hallucinations or delusional material were elicited, and she has good judgment and adequate insight into her behavior. She seemed to be of at least average intelligence, and the affect demonstrated during the interview was appropriate.

Sandra gave no indications of being a seriously disturbed individual or even one who could be described as an inadequate personality. She does employ the defense of denial, and much of her responses seem to have a pollyanna effect. One, I feel, must be cautious of the glowing picture she attempted to demonstrate during the interview especially in regard to her parents. She gave indications that she could easily relate to other individuals, and there were no manifestations of repressed hostility or aggression. The court is requesting an evaluation to help the judge determine whether or not there are any mitigating circumstances before he hands down the final sentence.

DR/pp

April 11, 1975

Dr. Abdon Villalba
2341 Oakwood Drive
Cuyahoga Falls, Ohio

In re: State of Ohio
-vs-
SANDRA LOCKETT
Criminal Number: 75 1 96

Dear Dr. Villalba:

Enclosed is a copy of the Court's order appointing you to examine Sandra Lockett as to her mental condition.

The one question to be considered in this case at this point is whether or not the Defendant has a mental deficiency.

As required by Ohio law, examination is to be made by a psychiatrist and a written report of his findings as to the mental condition of this woman shall be made to the Court. Your report and/or testimony is for the purpose of aiding the Court in making its determination as to the Defendant's mental capacity. (ORC 2929.03(D) and 2947.06).

To assist you in formulating the wording of your written report to the Court, please be advised that the legal definition of "mental deficiency" is as follows:

> "Is whether or not the offense was primarily the product of the offender's (Sandra Lockett) psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity." [ORC 2929.04(B)(3)].

If I can be of any assistance in providing you with background information concerning the nature of the crimes Miss Lockett committed, please do not hesitate to contact me and I will be happy to review my file with you.

Please address your written report to me.

Very truly yours,
JAMES V. BARBUTO, JUDGE
Court of Common Pleas

mas
cc: Judge
John H. Shoemaker, Assistant Prosecutor
Attorney Max W. Johnstone
Attorney Edward A. Bayer
Dan Reinholt, Psycho-Diagnostic Clinic

A. E. VILLALBA, INC.
Abdon E. Villalba, M.D.
Oakwood Professional Center
2341 Oakwood Drive
Cuyahoga Falls, Ohio 44221
Telephone 929-3956
929-3829

April 29, 1975

Honorable James V. Barbuto, Judge
Common Pleas Court, Summit County
209 S. Main Street
Akron, Ohio 44308

Re: Sandra Lockett
Criminal No: 75 1 96

Dear Judge Barbuto:

This is in reference to Sandra Lockett, a 21 year old colored, separated from her husband, female who was interviewed by this examiner on April 23, 1975, in the Summit County Jail, Akron, Ohio. Mrs. Lockett was found to be in no acute physical or mental distress, well oriented to person, time and place, friendly and receptive for this psychiatric interview. She smiled easily, and gave a chronological account of her present and past condition. She began talking about her mistakes in life, like getting married too young, at the age of 15, to a 22 year old male who was basically lazy, did not like to work, nor take responsibilities, and has been separated from him for the past 5 years. She claims that she had to get married, because she became pregnant by her ex-husband, and has a 5 year old son. She claims having no major problems with her parents, with whom she has been living, and her mother has been helping her to take care of her son. She has been working full-time, for Chrysler Corporation, since 1970, and going to business school as well. She also admitted having problems in the past, taking heroin and smoking pot occasionally, but denies taking hard drugs and injections. She was involved in petty theft in 1971, and accused of forging a check, but she states that her ID card was stolen and that someone else signed her name on the check. She denies abusing alcohol, and denies depression,

suicidal and homicidal tendencies.

Sandra is aware of being jailed because of being accused of aggravated murder when a pawn shop owner was killed, on January 15, 1975. Prior to this, Sandra went to New York to join her half brother James, where she met the two men involved in the incident, Al Parker and Nathan Earl Dew, who followed them in a second car to the Akron area. The four of them apparently have been together, one time or another, having fun, and planning how to help the two men to get money for them to go back to New Jersey. She stated that she went with Al Parker, Nathan Earl Dew, and her brother James, to the pawn shop in order to pawn a ring, but she did not get out of the car while the three men were dealing with the owner. She added that she had no knowledge about what was going on inside, and drove her friend Al to her aunt's house, and finally left in a cab.

Around the same time she claims that the police were all around the home, and Al Parker tried to give her the gun, but she did not take it. She was told that her brother James and Nathan Earl Dew went home by bus. Later on she stated that she found out that Al Parker killed the pawn shop owner, and later on involved her in the accusations to deal with the prosecutors. She emphasized again that she had no participation or knowledge of the crime committed by Al Parker, learning some of the details later on. Mrs. Lockett was eager to talk, spontaneous, showing an appropriate affect, smiling, and the report was easily made. She showed no gross changes in mood, anxiety, nor depression, having good memory for recent and remote events. She showed no gross delusions (a false belief out of keeping with the individual's level of knowledge and his cultural group. The belief results from unconscious needs and is maintained against logical argument and despite objective contradictory evidence), nor hallucinations (a false sensory perception in the absence of an actual external stimulus. May be induced by emotional and other factors such as drugs, alcohol, and stress.), and denying suicidal and homicidal tendencies. She displayed no gross impairment of intellectual functions throughout the interview, and seems to be functioning in the low average range of

intelligence. She seems to differentiate right from wrong, and gave details about her wrong-doing in the past.. She emphatically denies the offense of which she has been accused, and whatever participation she had in the event, I feel that she was not psychotic, nor mentally deficient, or deteriorated at that time, nor at the time of this psychiatric interview in Summit County Jail. I would add that at the end of the interview she was permitted to use the telephone to call her mother, when she again sounded pleasant, sociable, and making an intelligent conversation.

Hoping that this information will be of value to you,

Very truly yours,
s/Abdon E. Villalba, M.D.

April 11, 1975

Dr. Martin J. Gunter
1612 Portage Trail
Cuyahoga Falls, Ohio

In re: State of Ohio
-vs-
SANDRA LOCKETT
Criminal Number: 75 1 96

Dear Dr. Gunther:

Enclosed is a copy of the Court's order appointing you to examine Sandra Lockett as to her mental condition.

The one question to be considered in this case at this point is whether or not the Defendant has a mental deficiency.

As required by Ohio law, examination is to be made by a psychiatrist and a written report of his findings as to the mental condition of this woman shall be made to the Court. Your report and/or testimony is for the purpose of aiding the Court in making its determination as to the Defendant's mental capacity. (ORC 2929.03(D) and 2947.06).

To assist you in formulating the wording of your written report to the Court, please be advised that the legal definition of "mental deficiency" is as follows:

> "Is whether or not the offense was primarily the product of the offender's (Sandra Lockett) psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity." [ORC 2929.04(B)(3)].

If I can be of any assistance in providing you with background information concerning the nature of the crimes Miss Lockett committed, please do not hesitate to contact me and I will be happy to review my file with you.

Please address your written report to me.

Very truly yours,

JAMES V. BARBUTO, JUDGE
Court of Common Pleas

mas
cc: Judge
John H. Shoemaker, Assistant Prosecutor
Attorney Max W. Johnstone
Attorney Edward A. Bayer
Dan Reinholt, Psycho-Diagnostic Clinic

The Honorable James V. Barbuto
Judge, Court of Common Pleas
Akron, Ohio 44308

Dear Sir: re:

Psychiatric Examination on Sandra Lockett:

Sandra Lockett was examined on 15 April, 1975. She states she was framed, and she discusses Al Parker and his girlfriend and her cousin. Schooling included two elementary schools: then West Jr. High, Thornton, and Jennings. Also Central High to the 11th grade. She missed school a couple of times, and also got in a fight, that's why she changed schools so often. Hospitalizations included a breast operation, two stomach operations, and traction for her back. City Hospital, St. Thomas, and Green Cross. Her back hurts now, at times. She denies drinking. The only drugs were snorting heroin which she never shot. Also went to Hamilton Business College, and can type.

Work was at Chrysler in Twinsburg for four years. She liked it. Got a ride there with boyfriend. She could work with people. She apparently worked in plant with a high-low wagon and then as a spot welder. Had some nerve trouble, and got some nerve pills from her doctor. Also bites fingernails. Never had a nervous breakdown, but mother has a great deal of nervous trouble. Really has bad nerves, and also takes nerve pills. She never hears or sees anything out of the ordinary. No dreams. Capitol of Ohio is Columbus. She had been to New Jersey and New York. Last year still worked at Chrysler. Could save some money, but her father is not working and she helped family. Questioned about buying three eight cent stamps with a quarter, she immediately recognizes she is to get one cent change.

The impression is that she is not suffering from a psychosis. She also is not felt to be mentally defective. It is requested that I make a determination of her mental capacity and in conclusion, it is not felt that the offense was primarily the product of Sandra Lockett's psychosis or

mental deficiency, even though such condition would be insufficient to establish the defense of insanity.

Sincerely,

Martin J. Gunter, M.D.

MARTIN J. GUNTER, PH. D., M.D.
Diplomate AM. Bd. Psychiat. and Neurol.
F.A. Psychiat. A.
No. Hav. Med. Arts Bg.
Cuyahoga Falls, Ohio 44223
Phone (Akron) WA 3-1985

April 26, 1975

James V. Barbuto, Judge
Court of Common Pleas
209 South High Street
Akron, Ohio 44308

Dear Sir: re: Sandra Lockett

The offense was not primarily the product of a psychosis or mental deficiency.

Sincerely,

MJG:lg

Martin J. Gunter, M.D.

SUMMIT COUNTY COURT OF COMMON PLEAS
PRESENTENCE INVESTIGATION
(SHORT FORM)

DATE: April 28, 1975

JUDGE: HONORABLE JAMES V. BARBUTO

PROSECUTOR: John Schoemaker/James Rudgers

CASE NO. 75 1 96

ATTORNEY: Max W. Johnstone/Edward Bayer

DEFENDANT: Sandra M. LOCKETT aka JONES, YOUNG, MAJAL

JAIL: Yes BAIL: No AGE: 21

ADDRESS: Summit County Jail SEX: Female

RACE: Black

CHARGE: Aggravated Murder
Aggravated Robbery

ORC 2903.01
2911.01

CIRCUMSTANCES OF OFFENSE

The Indictment for Aggravated Murder (1) and Aggravated Robbery (1) reads in part that Sandra M. Lockett on or about January 15, 1975, did commit the crime of Aggravated Murder in that she did purposely cause the death of Sidney Cohen, while said Defendant was committing, or attempting to commit or fleeing immediately after committing or attempting to commit aggravated robbery (2911.01), said death being contrary to Ohio Revised Code Section 2903.01 (B), and further said cause of death being done under aggravating circumstances, to-wit: Specification (1)

to Count (1) 2929.04 (A) 3: The Grand Jurors further find and specify that said offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by said Defendant, to-wit: Aggravated Robbery, 2911.01. Specification (2) to Count (1) 2929.04 (A) 7: The Grand Jurors further find and specify that the offense presented above, the killing of Sidney Cohen, was committed while the said Defendant was committing, attempting to commit, or fleeing immediately after committing or attempting to commit aggravated robbery, 2911.01.

Count Two, Aggravated Robbery: that while she was attempting to commit or was committing a theft offense as defined in 2913.01 of the Ohio Revised Code, to-wit: said Defendant, Sandra M. Lockett aka Sandra Young, aka Sandra Jones aka Sandra Majal, did take and deprive Sidney Cohen of certain property, to-wit: one (1) Smith and Wesson Pistol, Serial Number D–683568, Blue Steel, or while fleeing immediately after such attempt or offense did inflict serious physical harm to another, ie., she did kill Sidney Cohen in the City of Akron, County of Summit and State of Ohio, with a deadly weapon which was on or about her person or under her control, to-wit: A Pistol, said offense of Aggravated Robbery in violation of Section 2911.01 (A) (1) and/or (2) of the Ohio Revised Code, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

On April 3, 1975, the jury, having heard testimony, arguments of counsel, the charge of the Court, retired for deliberation. On the same date, the jury returned their verdict in writing finding the Defendant Guilty as charged to Count One of the Indictment, to-wit: Aggravated Murder, A Special Felony in violation of Section 2903.01 (B) of the Ohio Revised Code, and further finding the defendant Guilty of Specification One (1) to Count One (1) 2929.04 (A) 3 and further finding the Defendant Guilty of Specification Two (2) to Count One (1) 2929.04 (A) 7, and Guilty as charged in Count Two (2) of the Indictment, to-wit Aggravated Robbery, a felony of the first (1st) degree in violation of Section 2911.01.

Thereupon, the defendant was remanded to the Summit

County Jail to await further hearing in this matter.

* * * * * *

Police reports are rather lengthy and involved and statements conflicted. I have reviewed most of the statements; police reports; talked with Akron Police Officer Goodwell, Jr.; and Probation Officers Robert Schuster and Richard Kinsinger. A witness to the killing of Sidney Cohen told police the subjects were three (3) colored males. The males were Al Parker, N/M 25 (recently sentenced by the Court), James Lockett, N/M 36 (under investigation by this department), and Nathan Earl Dew, N/M 27 (under investigation by this department). Probation Officer Kinsinger reports that Mr. Dew told him the group had met in New Jersey and two days prior to coming to Akron, Mr. Dew had purchased a weapon. Mr. Dew's wife said he had mentioned earlier about going to Ohio. According to Mr. Dew, he knew Sandra Lockett and James Lockett for about two or three days and he had known Al Parker for about eight or nine months. Police reports show that Sandra Lockett had known Mr. Parker for some time and had visited with him in Chicago James Lockett had served time in the Attica State Prison and Sing-Sing and is considered a leader in a group.

Al Parker told police that James Lockett, Nathan Earl Dew, Sandra Lockett and himself had arrived in Akron on January 14, 1975, in two different cars coming from New Jersey. The four of them ate supper and then went to the small home at the rear of 469 West North Street and discussed prospects of getting enough money for a return trip to New Jersey. Reportedly, Mr. Dew and Mr. Parker talked about holding up a pawnshop but they did not know too much about Akron. Sandra Lockett suggested Sid's Market Loan, 42 East Market Street. They talked about James Lockett and Nathan Dew going into the loan company on the pretext of pawning a ring, Al Parker would come in later, ask for a .38 revolver to look at, load it and then tell the owner it was a holdup. After their conversation, Sandra Lockett drove Al Parker to the home of Joanne Baxter and, on the way, drove by Market Loan. Sometime after 11 o'clock on January 15, the three males

and Sandra Lockett headed for Market Loan, parked the 1972 Lincoln on High Street, and James Lockett and Nathan Earl Dew walked towards the loan company. A short time later, Al Parker went to the loan company. He told Sandra Lockett to keep the car running, but she went nearby for something to eat. A statement by Al Parker was he looked at a gun, loaded it, told Mr. Cohen it was a holdup and Mr. Cohen grabbed the barrel of the gun causing it to discharge. Here, I have the impression Mr. Cohen did not "grab" the gun but might have made a gesture to move it aside. They ran out in different directions and Al Parker ran to the Lincoln meeting Sandra Lockett. Nathan Earl Dew said the holdup had been planned by James Lockett, Al Parker and himself but that he had changed his mind and only intended to pawn the ring.

After leaving the scene, Sandra Lockett claims Al Parker was having some car trouble. They took a cab which was stopped by police. Parker placed the gun under the front seat of the cab and later it was discovered by the cab company and reported to police. When police interviewed Sandra Lockett on January 16, 1975, she admitted along with Al Parker, Nathan Earl Dew, and James Lockett, they went in Parker's car to the pawnshop on East Market Street. She said their intent was pawning a ring belonging to Nathan Dew for gas money to return to New Jersey. She claims that Mr. Dew and Mr. Lockett walked down High Street towards the pawnshop, she and Mr. Parker had a discussion about her getting a sandwich, which she did at a nearby restaurant, and Al Parker went on to the pawnshop. She said Al Parker returned shortly, about the same time she was returning back to the car, and he drove off rather hurriedly. They went to her aunt's house where Parker's Lincoln ran out of gas; they called a cab, which was stopped by police, Parker pulled out a gun from his pants, and as she refused to take it, he slid the gun under the front seat of the cab.

Joanne Baxter told police that there had been a meeting in the bedroom of her home between Nathan Dew, James Lockett and Al Parker. Sandra Lockett said she first saw the gun used in the crime when she got in the car after Parker came running from the pawnshop. Al Parker had

the bullets in his pocket prior to the shooting and these bullets had been seen by Sandra Lockett.

Sam Cohen, the victim, was a 61 year old caucasian male of small build and weighed 140 pounds. He was shot at approximately 12:52 PM on January 15, 1975, at 42 East Market Street and was dead on arrival at Akron City Hospital. The primary cause was cardiocirculatory collapse due to internal hemorrage due to gunshot wound of the chest with laceration of aorta. The gun used was a .38 caliber Smith and Wesson.

DEFENDANT'S STATEMENT (copied)

"On or about the 15, Jan, 1975. There was a killing on 43 W. Market Sidney Cohen Pawn Shop. Which I became Involve In from showing a person where to Pawn a Ring at. The Person Was Earl Dew which is One Of The Person That Was Involved In The Incident. They Way I Was Involved was That I Was Used. By Them. They used Me to Get around On. They Used me to keep the Car The Night Befor to Pick Al Parker up the following Morning from Miss J. Baxter House 701 Callis Oval. Miss Baxter is Al Perkers Girl friend at the Time. Where he Was Staying at. I had Know Kind of Knowings thatThere Was Going to Be a Robbery. Al Perker Said I Planned Robbery. He lieded On the Stand. Miss J. Baxter She lied for Him. Because She Knew That I Was In here Taking her change. The Night When The Incident Happen Al. Parker Went Back to Her House about 9:30. 10:00 When He. Got Back There Miss Baxter Was Packed to leave With Mr. Parker to Go Back to New Jersey, City. Before I Come down here to talk to The Police I Told Al Parker That I Was Coming down here Because I Knew That I Hadnt done Anything. I ask Him before myneighbor Mrs. Hattie Hammon. I Said Slim did you Robb that man he said No! I Said Slim did You Kill That Man he said No! Then I Said That's all I Want To Know. He Said Baby You Know I Wouldnt do That and have You With Me. Then he Said Baby Your Not Going To Tell On Me are You. And I repleyed I don't Have Any Thing to do With Your Business. That Was The last I Seen of Him. I feel as though If The Truth Was Really Searched for Then I

Wouldnt Be here now. I didnt have Any Thing to do with It. Parker feels as If I Was The Reason he was Cought by The Police Dept. I didnt Know Where he had Went to. he told me That If he went down he Was taking me with Him. because I Crossed Him Up. He Knew That I didnt Know Any Thing about The Mess. That's Why I Couldnt Really defend my Self. If You Truley look Into That Matter You Will See That I am Telling You The Truth about This. And another Thing. Did They Ever Give Al. Parker a lie Detective Test and Miss Baxtor. Im Willimg to take Any Kind of Test That they are Willing to Give me Because I knowms That I am Innocent about It all.

I never Been Involved With Any Body That Robbs People or Kills. There isnt a Person In The family That has Ever Been Involve in Such Matter. It's Wrong for people to Judge a Person. Becuose a Person Hates You. It Wrong. The Jury was Preice from The Start In The Court Room. There Was a lot's of Things That Went On In There That I Knew Wasnt Suppose to Go On. It Was Wrong. There Was people On The Jury That Shouldnt Been on There. It isnt fair.

I dont think I Should Go To Jail off Know Lies If The Truth Was Told You Would See It Wouldnt Be me in here It Would Be Some Body elese. Thank You.

PRIOR RECORD

Sandra Lockett is a negro female who was born May 18, 1953, in Birmingham, Alabama. She is 5'7", weighs 130 pounds, has black hair and brown eyes. She is also known as Sandra M. Young, Sandra M. Jones and Sandra

O. S. B. # A 727 141
F. B. I. # 671-788-J 5
A. P. D. # 63574
Her record in Akron, Ohio, is as follows:

JUVENILE COURT, CASE NUMBER 21416.

August 8, 1964, Shoplifting; September 30, 1964 Adjusted and Admonished (Took two (2) 45 RPM records from

O'Neils store.)

April 13, 1966, School incorrigibility; May 2, 1966, Probation (Referral made by Pupil Personnel, who requested exclusion from school for the remainder of the semester. Behavior problem did not improve, transferred to West School and then Jennings School and the problem persisted. She was suspended from Jennings; failed to report to the probation officer and was a runaway for two weeks. She had been assaultive at school, had a surly attitude with teachers and was accused of carrying a knife to a game. A recommendation to the Ohio Youth Commission was made in February, 1967, but the Lockett's did not agree with this and arranged a placement for the subject with a Mrs. Josephine Calhoun in Birmingham, Alabama. Mr. Kannel approved this placement and the case was closed August 16, 1967.)

January 30, 1968, Truancy; February 15, 1968, Excluded from school, no further action.

(Walk-in referral by subject's mother complaining Sandra and her sister Brenda, had been runaways for over two weeks. The Board of Education complained the subject had been excessively absent from school. ". . .she showed no real feelings of guilt. . . .")

April 23, 1968, Petit Larceny; July 12, 1968, Adjusted and Admonished

(Subject was with her Aunt, Jacqueline Ford. They had a dress under their clothing and earrings in their purse. Sandra Lockett gave police false information.)

March 17, 1969, Consent to marry; March 19, 1969, Consent granted.

(The parents said the subject was six (6) months pregnant.)

June 4, 1979, Interception of Letter and Forgery; August 4, 1970, restitution ordered and probation.

(Referral by Postal Inspector Webb. The Welfare check with payable to Rosemary Ford in the amount of $189. The subject admitted cashing the check—"Sandra had a somewhat unconcerned attitude throughout the hearing".

It was noted on September 10, 1970, that the subject had failed to appear for three (3) appointments resulting in the probation officer going to the home. The probation officer noted, "This case is going to be very hard to work with.

The entire family is rather reluctant to cooperate with the Court . . . Sandra is very coy and cool and not about to be told what to do".

The subject refused to make restitution and the case was closed with no further action because "All in all the Lockett family has been difficult to work with. . ." Cooperation was such that the probation officer could not work with them.)

ADULT

November 3, 1971, Petit Larceny; Case number 390663; $25, costs and 30 days, suspended 30 days.

(Spartan's, State Road)

January 10, 1972, Grand Larceny, Case number 393106, dismissed June 11, 1973.

January 10, 1972, Resisting an Officer; Municipal case number 393107, $25 and Costs

(Spartan's Store)

January 10, 1972, Assault and Battery; 393108 dismissed June 11, 1973

(Spartan's Store)

Sheriff's Office, Akron, January 10, 1972, Grand Larceny; Same as above, Municipal case number 393106.

December 18, 1974, Forgery; Municipal case number 429732, to Grand Jury

(This apparently involved $285, occurred September 11, 1974 at Portage Furniture.)

January 16, 1975, Aggravated Murder; Dismissed, Secret Indictment January 21, 1975, Instant case.

(While discussing the prior record, the subject smiled and seemed to be quite nonchalant.)

FAMILY HISTORY

Father: Enoch Lockett, age 58 of 165 West North Street. He and the subject's mother have two children; this is his second marriage. He has a son, James Lockett, by his first marital union. He is retired due to disability and was a former construction worker at Ruhlin Construction Company.

Mother: Evelyn Lockett, age 43, address same as her husband's. The defendant claims her parents get along

"good" and she has a beautiful relationship with her parents dispite the fact that they always favored her sister, Brenda.

(Juvenile Court records show both Lockett children were referred to Juvenile Court. One time, Mrs. Lockett complained about Mr. Lockett's excessive drinking, another woman in the home, etc. Further, the Juvenile Court records show the parents' union was a common law relationship and started in 1949. Both Sandra and her sister had an illegitimate child although Sandra married just before the child was born; both received Welfare assistance and both had many Juvenile Court referrals.

Sister: Brenda Lockett, age 25, was placed on probation to this department for the charge Forgery-Uttering. She failed to report and as we are unable to locate her, a Capias was issued on January 21, 1974.

Husband: Albert Young, age 26, address unknown. The defendant said she and Albert Young married because she was pregnant on March 21, 1969, in Akron, Ohio. They separated in June, 1970, because he failed to support the family and she has not seen him since. She said she and Albert have one child, a son, Albert Young, age 5, and he resides with her mother, Evelyn. The defendant claims her son has always lived between her home and her mother's place. He is in good health.

Boyfriend: Billy Callaway, age 25, of 1375 Laffer Avenue. The subject said she met Mr. Callaway at the Chrysler Plant where they both worked. They lived together for several years at 391 Kline Street. She said their relationship now is poor because they had a "bad disagreement" as he thought she was going with Nathan Earl Dew at the time the offense occurred.

HOME AND NEIGHBORHOOD

The subject came to Akron, Ohio, at the age of one with her parents from Alabama. Her parents came here for better working opportunities.

The defendant and her sister have somewhat always relied on their parents for support. The parents have two homes, one on North Street and one at 158 Tarbell Street.

The parents have made both of these homes available on occasion to their daughters. In fact, she said the Tarbell address was purchased for her and her sister Brenda. This is an older two-story home.

Prior to her arrests, the subject said she lived at 391 Kline Street with her boyfriend Billy Callaway.

EDUCATION

The subject attended a variety of Akron Public Schools and was suspended from the majority of them according to Juvenile Court records. Suspensions started at Crosby Elementary School and continued through various other Jr. High schools. School reports show Delinquency, Truancy and Incorrigibility. One time she attempted to fight a teacher.

The subject's mother was critical of the schools and claimed they were picking on her daughter.

Testing in the fourth grade showed the subject had an IQ of 107 according to the California Short Form Test. However, two years later when the same test was given, she scored an IQ of 76. Apparently, the subject's attitude towards school changed as she neared the sixth grade, as she showed no interest in learning or cooperating. This writer feels that is the reason for the lower IQ score.

Central-Hower High School reported she entered their school on September 6, 1967, left on November 12, 1968, in the same grade, ninth, and transferred to North High. Grades at Central-Hower were practically all failing. North High School, which was the last school she attended, reports she left their school in the tenth grade and grades for the most part were failing. The subject said she quit school because she was pregnant. She said her grades were very good but not as good as her sister's.

EMPLOYMENT

Social Security number is 293-52-1607. The defendant states she was unemployed at the time of her arrest and she has been supported by her parents and the Summit County Welfare Department for the past two years. The Summit County Welfare Department was unable to locate her rec-

ord. She said the Welfare Department was providing her with $141 a month.

She listed two former employers; The American Safety Company, Medina, Ohio, which makes seatbelts, address unknown, and the Chrysler Stamping Plant, Twinsburg, Ohio. The Chrysler Stamping Plant reports she was in their employ from April 12, 1972 to June 5, 1974, earning $5.08 an hour; employment terminated due to excessive absenteeism which she failed to substantiate. The subject was a spot welder and reportedly was very adept driving a tow motor.

MILITARY HISTORY

The subject expressed a real interest in entering the military service. She said she went to the Army Recruitment Office in Akron, passed a test in Cleveland but had showed them the wrong identification and was not accepted.

I spoke with Sergeant Anthony Stewart, Army Recruiter, and he vividly recalled Sandra Lockett making an application with them. He said she was *not* tested. She showed Sergeant Stewart an identification card for Budda (the drug clinic). As it did not say employer on her card and she refused to give him information, Sergeant Stewart determined that she was receiving treatment there, she became angry and used profanities and left! Sergeant Stewart said the incident occurred about three or four months ago and "she got very hostile and claimed she had never been on drugs".

INTERESTS AND ACTIVITIES

The subject said she enjoys roller skating, bowling, fishing and shooting pool. She does not seem to have any real religious interest but said in the past she attended Bethel Baptist Church for about four years. Reverend Hawkins of Bethel Baptist has not replied to our inquiry. For a girlfriend, she listed Barbara Hatcher and commented that Ms. Hatcher was the one who started her on drugs. (Presently, we have on probation a Barbara Hatcher for drug charges and she is age 22.)

HEALTH

Sandra Lockett considers her health to be very good at this time. She claims she had used drugs, including snorting heroin, for a period of time which resulted in a psychological addiction. She said she was on heroin for about six months, really does not need treatment but did go to Akron Drug Abuse Clinic. Marion, P erson, Counselor, Akron Drug Abuse Clinic, reported sh was admitted to the Clinic on May 24, 1974, and "she seemed to be very sincere about becoming drug free and getting ahead in life. I did not have any trouble with her keeping our counseling appointments. . . In my opinion and observations, Sandra was on the road to success".

B. N. Riddle, M. D., Akron, reports he saw the subject under the name of Sandra Young, referred her to the Drug Abuse Clinic in 1973, and also saw her several other times in 1973 for an ovarian cyst, pelvic inflamation and hysterectomy. Surgery was had at Akron City Hospital and the diagnosis on August 13, 1973 was total abdominal hysterectomy; on March 20, 1973: Excision of para-ovarian cyst: Left Salpingocophorectomy: Appendectomy: Dilation and curettage.

Dr. Martin J. Gunter, Cuyahoga Falls, Ohio, supplied a *confidential* psychiatric examination on Sandra Lockett to the Court dated April 16, 1975. Dr. Gunter's impressions of the subject is not suffering from a psychosis and is not felt to be mentally defective. Further, Dr. Gunter concluded that it is not felt that the offense was primarily the product of Sandra Lockett's psychosis or mental deficiency, even though such condition would be insufficient to establish the defense of insanity.

RESOURCES AND LIABILITIES

The subject states her home furnishings are of the approximate value of $2,300 and she has $200 saved. She said she is purchasing a 1973 Monte Carlo in her mother's name.

SUMMARY

Sandra Lockett is a 21 year old female who is before the Court for a very serious charge which she claims to know

very little about and innocence. There were three others involved; Al Parker, who has been sentenced; a presentence investigation has been completed on Nathan Earl Dew, and a presentence is pending on James Lockett. James Lockett gave his probation officer absolutely no information concerning Sandra Lockett, and Nathan Earl Dew gave Probation Officer Kinsinger no information concerning Sandra Lockett. In fact, Mr. Dew told his probation officer that he did not actually know the robbery was to occur on January 15, that he could not explain why it took four individuals to go to a pawnshop for only one purpose, one person to pawn a ring. Sandra Lockett denied to this writer any prior knowledge of or even an inclination of a robbery. Sandra Lockett admitted driving by the pawnshop the night before and showing the group the pawnshop. She denied that the day of the crime she and James Lockett had been by the pawnshop that morning or that she had any prior knowledge that the group had talked about robbing Easter's Grocery.

The defendant is one of two children born to Enoch and Evelyn Lockett of 165 East North Street. Her father had James Lockett (mentioned in the Offense) by another woman. Although the defendant described a "beautiful" relationship with her parents, it seems they have had their share of difficulties. The Juvenile Court Probation Officer summarized in a report around 1970: "Sandra and her mother do not get along. Mrs. Lockett is completely fedup with her daughter's problem. Probation Officer made appointments for Sandra with Legal Aid as she wanted a divorce and she failed to appear. . . She pretended to be very mature and was constantly putting down probation officers. Sandra has failed to appear for appointments. . ." The Juvenile Court record shows a history of incorrigibility, truancy and runaway. The subject's mother was critical of school officials and claimed they were picking on her daughter. Sandra was transferred to numerous schools, received suspensions from almost every one and finally quit North High School in the tenth grade as she was pregnant. She and Albert Young married on March 1, 1969, in Akron, and she left him around June the following year because he failed to support the family. Her husband's whereabouts is

unknown. Their son, Albert Young, now age 5, is being cared for by the subject's mother. The boy is reportedly in good health and has always lived with the subject or the maternal grandmother.

Sandra Lockett has a male friend at this time, Billy Callaway, age 25, but she is not sure of their relationship. She said she and Mr. Callaway had a "bad argument" because he thought she was interested in Nathan Earl Dew. She claims she and Mr. Callaway lived together for about two years until the time of her arrest at 391 Kline Street, Akron. Otherwise, she had lived in her parent's homes on Tarbell Street or North Street.

Social Security number is 293-52-1607. The subject was unemployed at the time of her arrest. She said she was supported by her parents and Welfare. The Summit County Welfare Department is unable to locate her record; this might be due to her use of various aliases. The only real profitable employment was the period of time that she worked at Twinsburg Stamping Plant as a spot welder and tow motor driver. This was a good paying position but she was released because of unexcused absences.

The defendant expressed an interest in the military service and told this writer she had passed a test at Cleveland. Her story regarding this conflicted greatly with the local Army Recruitment Sergeant. Sergeant Anthony Stewart, Army Recruiter, said she never was tested but upon questioning became very angry, used profane language, and left his office.

At the time of the presentence investigation, I found the subject to be pleasant, somewhat jovial and cooperative. She denied having a drug problem although she admitted snorting heroin for about six months. During our investigation, I received information that one of her companions in New York or New Jersey purchased drugs and that Sandra Lockett tested same for it's quality. This occurred before the group returned to Ohio. There was also mention that Sandra Lockett, along with Nathan Earl Dew and James Lockett, were stopped by police regarding a gun charge. We have not received a reply to our inquiry to New Jersey Police.

Juvenile Court records describe the subject at the age of

17 as "sophisticated". After interviews with her, I was more comfortable with the test score rating in the fourth grade of 107 (California Short Form). Around the sixth grade began a behavior problem and little if any motivation on her part towards school. In the sixth grade, she scored an IQ of 76, which is considerably lower than the prior score. My impression is in agreement with Dr. Martin J. Gunter's: she is not suffering from a psychosis, that she is not felt to be mentally defective or mentally deficient.

At no time during my investigation of this case did I receive the impression the subject was acting out of duress, coersion, or strong provocation at the time of the crime. She told me that she voluntarily went to the pawnshop and was not forced at any time. The subject's attorney asked me to determine why she took the stand in this case; the subject told me she did it on her own and she lacked confidence in her attorney. She projected much blame on Al Parker and Miss Baxter, yet I received information that much of Al Parker's statement was verified when he took a lie detector test.

After reviewing numerous reports, this writer is convinced that the victim did not induce or facilitate the offense. Detective Goodwell, Jr. Akron Police Department, said he is of the opinion that Mr. Cohen did not induce the crime in any way! Further, Detective Goodwell said he never heard of Mr. Cohen ever having any trouble and that he was familiar with him. Detective Goodwell also commented that his opinion is that Sandra Lockett was also involved in planning to hit another place but backed off. Detective Goodwell added not only was she involved, but she is also a "junkie".

In conclusion, this writer has attempted to present to the Court the offender's history and character and some of the circumstances. On the other hand, the victim's family, expressed through the son of the deceased, Jerry Cohen, that the Court know: "My father would have given them anything they wanted. This I know. My father was a small, quiet and good man. . . No mercy and no sympathy" (regarding the defendants).

Respectfully submitted,

STELLA J. DENTON
Probation Officer

SJD/jr

APPROVED:

W. RICHARD MULHERN
Chief Probation Officer

AKRON DRUG ABUSE CLINIC
AFFILIATE OF AHEAD, INC.
11 SOUTH SUMMIT STREET
AKRON, OHIO 44308
TELEPHONE: (216) 434-4141

Rocco M. Antenucci, M.D.
Medical Director

Mrs. Rosslyne M. Wells
Executive Administrator

April 11, 1975

STELLA J. DENTON
Probation Officer
Court of Common Pleas
209 South High Street
Akron, Ohio 44308

Dear Ms. Denton:

In response to your letter for a summary and contacts with Sandra Young: Sandra was admitted to this clinic on May 20, 1974 at which time she was gainfully employed by Chrysler Corporation in Twinsburg. During her stay in this clinic I met with Sandra on the average of two to three times a week serving as her counselor. Our counseling sessions were focused mainly on her personal problems, and she seemed to be very sincere about becoming drug free, and getting ahead in life. I didn't have any trouble with her keeping our counseling appointments, and her overall attitude and general conduct in, and about the clinic were good.

In my opinion and observation Sandra was on the road to success as far as her drug problem was concerned.

I hope this brief summary of Sandra in my own, and the clinic's findings will be helpful to you. If there are any questions you have that this summary didn't cover, please don't hesitate to contact me.

Sincerely,

MARION PETERSON
Counselor

MP:cr

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,
Plaintiff-Appellee,

vs.

SANDRA LOCKETT,
Defendant-Appellant,

Case No. 75-01-96
Judge Barbuto

ENTRY SUSPENDING EXECUTION OF SENTENCE PENDING APPEAL

It is hereby ORDERED that the execution of sentence rendered May 2, 1975, in the case of State of Ohio vs. Sandra Lockett be suspended during the pendency of her appeal.

JAMES BARBUTO
JUDGE

APPROVED:

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Columbus, Ohio 43209
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GERALD SIMMONS
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JOHN SHOEMAKER
Summit County Prosecutor

STATE OF OHIO SUMMIT COUNTY	*ss:*	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT (January Term, 1976)
STATE OF OHIO, *Plaintiff-Appellee* *vs.* SANDRA LOCKETT *Defendant-Appellant*		C. A. No. 7780 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS OF SUMMIT COUNTY, OHIO CASE NO. 75 1 96

DECISION AND JOURNAL ENTRY
Dated: March 3, 1976

This cause was heard January 28, 1976, upon the record in the trial court, including the transcript of proceedings, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

DOYLE, J.

This appeal is presented from a judgment of the Court of Common Pleas of Summit County, in which court the defendant-appellant, Sandra Lockett, was convicted of crimes of aggravated murder with two specifications and aggravated robbery. Pursuant to the verdict of the jury, the court, after conducting the statutory sentencing hearing requirements, found no mitigating circumstances and sentenced the defendant to death.

There is no claim that this defendant physically shot the decedent while in the commission of a robbery. The entire case against her results from her complicity with other persons in this murder within the purview of the Ohio statutes regulating conduct in its relation to crime.

While this lengthy record of evidence depicts a sordid picture of human behavior, including the arrangements entered into by this defendant and her three companions to commit robbery for the purpose of securing money or other valuables, we find it unnecessary at this point to detail the evidence which was abundantly sufficient to compel a verdict of guilty. In a review of the companion case of State of Ohio v. James Lockett (conspirator and aider and abettor), this court in its decision set forth many of the salient facts, reference to which we now make.

Assignment of Error No. 1

"The trial court erred on voir dire examination by permitting inquiry into the scruples of individual jurors regarding the imposition of capital punishment. Such inquiry and subsequent challenges for cause deprived the defendant of her right to a fair and impartial jury reflecting a fair representative cross-section of the community."

The record shows that certain jurors were excused for cause when they stated that they could not take the oath, nor could they follow the law because a possible death penalty would be imposed on the defendant. There is no error here. Furthermore, no objection or exception was taken at the timeof the judge's ruling. Error is raised here for the first time. Compare, State v. Wilson, 29 Ohio St. 2d 203 (1972); State v. Patterson, 28 Ohio St. 2d 181 (1971); and State v. Elliot, 28 Ohio St. 2d 249 (1971).

Assignment of Error No. 2

"The trial court erred in permitting the prosecutor to inaccurately inform prospective veniremen that a sentence of death is only a possibility in the instant case. The result was a jury uncommonly willing to convict."

We find no error of a prejudicial character in this claim. R.C. 2929.02 and R.C. 2929.03 set forth the statutory mandates. From the language there employed, it is entirely proper to say that, at a time prior to trial, death is only a possibility. It would be only a rash guess without basis to conclude that the result would be "a jury uncommonly willing to convict."

It is further noted that this claim was not made in the

trial court. Compare, syllabus one, State v. Lancaster, 25 Ohio St. 2d 83 (1971).

Assignment of Error No. 3

"The trial court erred by conducting only insufficient and cursory inquiry in the *voir dire* examination of prospective veniremen regarding their personal scruples about capital punishment. When veniremen rightfully concluded from the circumstances that they were to give only one or the other of two permissible answers, and that questions relating to the court's query were undesired, the chilling effect which this method of selection had upon the imperative search for a fair and impartial jury requires a new trial."

Nothing in the record justifies the statements in this assignment of error. It is here again noted that the jurors excused for cause would not be sworn because of the possibility that the case would end with the imposition of a death sentence. They were not excused for the reason that they had opinions concerning capital punishment. The trial court specifically observed that they were excused "because they would not take the oath ***." Compare again, State v. Lancaster, supra, in connection with defendant's failure to object to the questions propounded to the prospective jurors.

Assignment of Error No. 4

"It was plain error and a denial of due process for the trial court to impanel prospective veniremen who repeatedly stated on voir dire examination that they could not divorce themselves from pretrial publicity."

The record of this trial reveals no objection of the defense to the composition of the panel because of pre-trial publicity. See, State v. Lancaster, supra. Over and beyond this requirement of trial practice, if error has indeed occurred, we find nothing in the record to show that any member of the jury was disqualified to sit because of pre-trial publicity. The record shows that those who had read of the robbery-murder all observed that they could and would judge the defendant only on the law and evidence presented on the trial. Nothing in this record indicates that the trial judge erred in finding that all impaneled jurors could hear the case and render a fair and impartial verdict solely on the evidence in the trial and the law given them by the court.

Assignment of Error No. 5

"The trial court erred in not reducing aggravated murder to involuntary manslaughter. When charging an alleged accomplice with complicity in felony-murder, the State must first prove beyond a reasonable doubt that the principal offender had a purposeful intent to kill, which the State failed to prove."

The testimony of the triggerman, Parker, was that as he pointed the loaded gun at the deceased victim for the purpose of robbery, the decedent grabbed for the gun. In the course of which, the gun was fired and the bullet killed the storeowner. Parker's finger was on the trigger before the gun was fired. A substantial part of this episode was witnessed by a young lady who was employed nearby and was looking into the store where the killing took place.

In connection with this assignment of error, which we find not well taken and hereby overrule, we quote a part of the decision of this court in State v. Palfy, 11 Ohio App. 2d 142 (1967):

"We understand the law to be, in respect to an aider and abbetor under the statute, that where a person engages himself as a participant with others to commit unlawful acts by the use of deadly weapons, or force and violence of such character as would reasonably be expected to cause the death of another, or if the conspired unlawful act, and the manner of its performance, would be reasonably likely to cause death, each participant in the conspiracy is, under the statute, equally guilty with the principal killer, ***."

" ***

"It is well established that one may be presumed to intend results which are the natural, reasonable and probable consequences of his voluntary acts. *State v. Farmer*, 156 Ohio St. 214. ***."

In pointing out the store to be robbed, the defendant engaged in a common design with others to rob the store operator by the use of force, violence, and a deadly weapon. The murder of the proprietor was a natural and probable consequence of the execution of the common design and that common design created such circumstances as would, in all probability, endanger human life.

It is long established law in this State that a purpose to kill may be inferred from the use of a loaded revolver dur-

ing the perpetration of an armed robbery. The facts here establish beyond a reasonable doubt a purpose to kill which, under the law, applies to the defendant.

This assignment of error is overruled.

Assignment of Error No. 6

"The court erred in not reducing aggravated murder to involuntary manslaughter because if the intention to commit a robbery suffices to make homicide a murder, as that crime is legally defined, all accomplices in the robbery would be guilty of murder. But, in Ohio, the definition of murder is altered to demand a purposeful intent, so that accomplices could not be convicted of §2903.01(B) unless they shared that purpose. There is no evidence that defendant shared that purpose."

The record is replete with evidence proving the participation of the defendant in the plans and schemes for robbery. In fact, she was a main conspirator and actually selected the victim's place of business for robbery.

Under the law as it presently exists, she was an aider and abettor to the crime of aggravated murder as well as aggravated robbery through her participation in the scheme and plan to rob the victim's place of business. Two cases arising in this district pronounce the law of today on the liability of aiders and abettors. They are Black v. State, 103 Ohio St. 434 (1921) and State v. Palfy, supra.

The uncontradicted record shows that this defendant, Sandra Lockett, the triggerman, Al Parker, James Lockett, and Nathan Dew agreed upon a common plan to rob the victim, Sydney Cohen. They planned on the use of a deadly weapon which they would steal from the pawnbroker, Cohen. They all knew that a triggerman, Parker, had bullets which would be used to load the gun to be stolen from the victim. They all planned the use of a deadly weapon for the purpose of robbery. This condition of affairs is firmly established in the evidence. From these and other facts, the death of Cohen was not only the proximate result of the aggravated robbery but also presented a consequence that could have reasonably been anticipated by all of the participants, including this defendant.

We exercise no doubt but that the evidence shows a purposeful robbery and a purposeful killing by the triggerman,

Parker, and that the same purposeful robbery and purposeful killing attaches with no exception to the defendant.

This claimed error cannot be sustained and is overruled.

Assignment of Error No. 7

"The instructions to the jury on the charge of involuntary manslaughter and the failure to instruct on the defense of accident represented plain error substantially affecting the rights of defendant."

Ohio crime R. 30 covers this assignment of error. However, it is observed that the court's charge on involuntary manslaughter would adequately include an accidental killing during a robbery. There is no error here.

Assignment of Error No. 8

"The trial court erred in imposing the death sentence on appellant, Sandra Lockett, for aiding and abetting an aggravated murder, while permitting the trigger-man, the principal, Al Parker, to be given the lesser sentence of life-imprisonment.

"A. For the prosecution to enter into a deal with the principal in the murder to give him a sentence of life imprisonment in exchange for his testimony against the aiders and abetters, was repugnant to concepts of fair play and justice and unconstitutional selective enforcement under the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

"B. Sentencing appellant, Sandra Lockett, to a more severe sentence than principal, Al Parker, is a 'legal contradiction' which must be corrected."

Prior to the trial of this case, the defendant was offered the same "negotiated plea" that was allowed to Parker, the State's chief witness. She refused the offer on several occasions and voluntarily consented to trial before a jury. In fact, her attorney explained in specific language what might be the consequences of a trial but after conference she continued to refuse the offer. She voluntarily assumed the risk of a death penalty.

That the triggerman in a murder should receive a life sentence and an accomplice or aider and abettor should receive a death sentence may appear unusual, but it must be

observed that this accused was just as guilty of aggravated murder and aggravated robbery culminating in murder as was the man who pulled the trigger. In fact, this defendant was not only an actual participant in the robbery but she was one of the chief negotiators of the robbery of the particular store and was an active manager of the entire affair, including the method employed to secure the gun used in the murder.

We do not find here a violation of any constitutional rights of the defendant and the assignment of error is overruled.

Assignment of Error No. 9

"The jury verdict of guilty on the charge of aggravated robbery is not supported by sufficient evidence and is contrary to law."

This record, beyond all doubt, establishes the commission of the crime of aggravated robbery by Al Parker who took the gun from the deceased, loaded it with his own shells, fired it into the body of the store proprietor and then gave it into the possession of this defendant. The court properly charged the jury on this quesiton.

We find no error here and this claim is overruled.

Assignment of Error No. 10

"In refusing to grant a continuance to enable retained counsel to prepare for trial Sandra Lockett was denied the Sixth Amendment Right to choice of counsel."

The record shows that competent and skilled counsel were appointed by the State to represent this defendant. The case was duly set for trial. The day prior to the hearing date the defendant sought a continuance to enable her to be represented by other counsel. This continuance was denied.

The record is scant on the question of whether, in fact other counsel had been retained. Nevertheless, a continuance of the case at this point in the proceedings was entirely within the sound discretion of the court, as long as defendant was actually represented by lawyers of competence and ability.

This claim of error is not well taken and is denied.

Assignment of Error No. 11

"The absence from the courtroom of the attorney 'in charge of the defense' during critical stages of the trial violated the defendant's right to counsel under *Gideon v. Wainwright.*"

The claim above relates to a temporary absence from the courtroom of Attorney Johnston. He was actively engaged in the trial at all essential or critical times, and during his short absence his competent co-counsel carried on the defense in proper manner.

This claim of error is not sustained and is overruled.

Assignment of Error No. 12

"The trial court erred in not granting defendant-appellant's motion for acquittal at the conclusion of the State's case on specification one of the indictment."

This specification reads, "*** that said offense was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by said defendant, to-wit: aggravated robbery."

The law relating to one who aids and abets another in the commission of a crime is heretofore discussed under assignment of error number five. The evidence is clear and sufficient for the test of beyond a reasonable doubt that this defendant aided and abetted in all of the felonious acts of the triggerman, Al Parker, including that of aggravated robbery.

This claim of error is not sustained and is overruled.

Assignment of Error No. 13

"The ineffectiveness of trial counsel denied defendant-appellant of her Sixth Amendment right to counsel."

It has been heretofore stated that the trial counsel appointed for the defendant-appellant were competent lawyers of high standing and that their trial strategy came well within the rules of good practice. Mere failure to make objections, which on hind sight might seem appropriate, is not sufficient in this case to establish reversible error.

This claim of error is not well taken and overruled.

Assignment of Error No. 14

"Sections 2903.01, 2929.03 and 2929.04 of the Ohio Penal Code permits arbitrary imposition of the punishment of death in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States."

Last year (1975) this court had before it on appeal the case of State of Ohio v. Bayless, Summit No. 7513, unreported. We then held, and now hold in the instant case that Ohio's latest capital punishment statutes do not allow the arbitrary imposition of the death penalty nor does their enforcement constitute cruel and unusual punishment. The State of Ohio permits capital punishment under the guide lines set out, and the enforcement of this statute does not contravene the provision of the Constitution. We affirm our conclusion in Bayless, supra, and overrule this assignment of error.

Assignment of Error No. 15

"The death penalty offends contemporary standards of decency and constitutes cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments to the Constitution of the United States."

This assignment of error is overruled. This court, in previous cases, has denied this claim. We believe this case was tried and judgment entered within constitutional and statutory boundaries, and the error now claimed is not sustained.

Assignment of Error No. 16

"The sentencing stage following a conviction for aggravated murder with specifications is unconstitutional in that it places the burden on the defendant to establish a reason why he should not be executed."

The record establishes a compliance with R.C. 2929.03. Following the jury's verdict and judgment thereon that the defendant had committed aggravated murder with two specifications and aggravated robbery, the trial court accorded the defendant the statutory hearing required in R.C. 2929.03. The hearing is given for the purpose of hearing evidence in mitigation of the statutory death penalty. This statute states that if it be found "that none of the mitigating circumstances listed in division (B) of Section

2929.04 of the Revised Code is established by a preponderance of the evidence, it shall impose sentence of death on the offender. Otherwise, it shall impose sentence of life imprisonment."

Mitigation of sentence has traditionally been a defense function, and the right of leniency has always been based upon the circumstances of the case and the circumstances surrounding the defendant himself. R.C. 2929.04(B) reads:

> "(B) Regardless of whether one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment and proved beyond a reasonable doubt, the death penalty for aggravated murder is precluded when, considering the nature and circumstances of the offense and the history, character, and condition of the offender, one or more of the following is established by a prepondence [preponderance] of the evidence:
>
> "(1) The victim of the offense induced or facilitated it.
>
> "(2) It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.
>
> "(3) The offense was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity."

We find no conflict with the Constitution or other laws in this statutory provision governing mitigation of sentence pursuant to a separate hearing after guilt has been established. In fact, it provides an added benefit to the convicted felon.

This assignment of error is without merit.

Assignment of Error No. 17

> "The trial court should not have imposed the death penalty in this case, because the offense was primarily the product of a mental deficiency, and such fact precludes the death penalty, under O.R.C. §2929.04(B) (3)."

The testimony of men who were shown to be experts in their respective fields was of sufficient verity for the trial court to conclude that the defendant did not fall within the category of persons exempted by the statutes from capital punishment. All of the examiners concluded that the de-

fendant was not suffering from a mental deficiency and that the defendant's participation in affairs of which she was charged was not a product of psychosis or mental disorder amounting to a mental deficiency.

This assignment of error is not well taken and is overruled.

Assignment of Error No. 18

"The defendant was denied a fair trail and due process of law by reason of misconduct of the prosecutor during the course of the trial."

It has long been the law of this State that improper remarks of counsel for the State during argument, unless so flagrantly improper as to prevent a fair trail, should be at once objected to; otherwise, error cannot be predicated upon the remarks alleged to have been improper.

Here the record is devoid of objections in most instances. As a consequence, the defendant has waived her right, if any existed, to raise the issue of prejudicial error. Over and beyond this, however, there is no error claimed which, if true, prevented a fair trail.

We find no error of a prejudicial character in this claim and it is overruled.

This case presents a heinous murder of an innocent victim. We have examined with care each and every claim of error and find none prejudicial to the rights of the defendant denying to her a fair trial. Her constitutional and statutory rights have been well guarded by the trial court and the final judgment here under review must be and hereby is affirmed.

The judgment is affirmed.

The court finds there were reasonable grounds for this appeal.

We order that a special mandate, directing the Court of Common Pleas to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute a mandate, pursuant to Rule 27 of the Rules of Appellate Procedure.

Ten days from the date hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals, at which

time the period for review shall begin to run. Appellate Rule 22(E).

Costs taxed to appellant.

Exceptions.

WILLIAM H. VICTOR
Presiding Judge
—for the Court—

VICTOR, P. J. and
BRENNEMAN, J.
Concur.

(Doyle, J., retired Judge of the Ninth District Court of Appeals, sitting by assignment under authority of Section 6.(C) Article IV, Constitution).

THE STATE OF OHIO, APPELLEE, *v.* LOCKETT, APPELLANT.

[Cite as State v. Lockett (1976), 49 Ohio St. 2d 48.]

APPEAL from the Court of Appeals for Summit County.

On January 15, 1975, Sidney Cohen was shot and killed in his pawn shop, located in downtown Akron. On January 21, 1975, appellant, Sandra Lockett, was indicted by the Summit County grand jury in connection with the Cohen homicide. She was charged with aggravated murder (felony murder), including specifications, and with aggravated robbery.

Appellant, approximately two weeks prior to trial, was offered the negotiated plea of voluntary manslaughter and aggravated robbery if she would cooperate with the state. This plea was rejected.

Prior to commencement of trial, on March 28, 1975, after the state had prepared its case, appellant was offered the negotiated plea of aggravated murder. This, too, was rejected. The offer was renewed on April 1, 1975, the date of trial, and was again rejected by appellant. On April 3, 1975, appellant was subsequently found guilty by a jury, of aggravated murder, with two specifications, and of aggravated robbery. The trial court, upon completion of the statutory requirements, found no mitigating circumstances and sentenced appellant to death, and the Court of Appeals affirmed.

The cause is now before this court pursuant to an appeal as a matter of right.

Mr. Stephan M. Gabalac, prosecuting attorney, and *Mr. Carl M. Layman, III*, for appellee.

Mr. Max Kravitz, *Mr. Gerald Simmons* and *Mr. Bruce Jacob*, for appellant.

CORRIGAN, J.

I.

Appellant propounds 17 propositions of law in this cause. The following is a summary of the relevant tes-

timony in this court:

Al Parker testified that, prior to coming to Akron on January 14, 1975, he was a resident of Orange, New Jersey. During the weekend prior to coming to Akron, Parker indicated that he met, for the first time, Joanne Baxter and the appellant in Jersey City, New Jersey (Friday, January 10, 1975). Baxter and the appellant, residents of Akron, were visiting the New Jersey area, and were apparently staying with relatives.

As the weekend progressed, Parker introduced Baxter and the appellant to his friend, Nathan Earl Dew. On Monday, January 13, 1975, Dew borrowed $60 from Parker, so that Dew could make bail for the appellant's brother, James Lockett. After James Lockett was released from jail, Baxter, the appellant, David Ford (the appellant's 17–year-old uncle), and James Lockett planned to return to Akron in appellant's car.

Dew and Parker agreed to lead the appellant to the interstate highway for the return trip to Akron. Because of bad weather, Dew and Parker eventually accompanied the group all the way to Akron.

Parker and Dew arrived in Akron on January 14, 1975, with the appellant, James Lockett, Ford and Baxter. After the appellant was taken to the local Methadone Clinic for her heroin substitute, Parker and Dew, along with the others, eventually ended up at the Lockett residence.

Because they had no money to go home, Parker and Dew discussed pawning Dew's ring. When the appellant and James Lockett became part of this conversation (with only Dew, Parker, James Lockett, and the appellant participating), the appellant suggested a robbery. She then proceeded to suggest and point out certain business establishments that might be suitable as a target for the robbery. Because none of the four had a pistol, James Lockett suggested robbing a pawn shop where they could ask to see a pistol, load it, and then use it to rob the pawn shop. Since Parker already had four cartridges in his possession, he was elected to be the triggerman at the suggestion of James Lockett. Appellant offered to lead the group to the pawn shop, but suggested that she not actually go in be-

cause the pawn shop operator knew her. After it was determined that the robbery would take place the next day, Dew and the appellant, using Parker's car, dropped Parker off at Baxter's house.

The next morning, January 15, 1975, Dew, James Lockett and the appellant, using Parker's car, picked up Parker at Baxter's apartment. According to Parker, the robbery plan called for Dew and James Lockett to enter Syd's Market Loan, in downtown Akron, ostensibly to pawn Dew's ring. Parker was then to follow, look at a pistol, and carry out the robbery. The appellant was to stay in Parker's car, wait two minutes, and then start the engine.

The actual robbery commenced during the noon hour with Dew and James Lockett entering the pawn shop as planned. Approximaely a minute later, Parker left the car and entered the pawn shop. Parker indicated that, when he entered, the owner, Sidney Cohen, was the only person present besides Dew and James Lockett. At Parker's request, Cohen showed him a pistol. Parker returned this pistol, at which point Dew pointed out another pistol, which Parker requested. Parker then took two cartridges out of his pocket, loaded the pistol, and declared that this was a stickup. The gun was pointed at Cohen with Parker's finger on the trigger. Parker testified that the weapon went off when Cohen grabbed at the pistol. As Cohen went down, he activated the robbery alarm behind the counter. The trio ran when Parker indicated that the alarm had been pushed. Parker kept the gun as he ran for his car. The appellant was in Parker's car when he returned. The engine was running, but Dew and James Lockett did not return to Parker's car. Appellant took the gun Parker had taken from the pawn shop and put it in her purse. Parker and appellant proceeded to the home of appellant's aunt, during which time Parker explained to appellant what had happened.

After staying a short time at the aunt's house, Parker and appellant left in a taxi which appellant had called. Parker sat in the back seat on the passenger's side while appellant sat behind the driver. Appellant then proceeded to give the driver directions to her parents' home. The taxi

was stopped by a police car approximately three or four blocks from the aunt's house. As the officers approached the tax, appellant told Parker that the gun was under the seat. Parker and appellant were then taken into custody.

Parker testified that he and the appellant told the police that he was from Chicago and was currently renting a room from appellant's mother. Appellant and Parker were released a short while later and returned to the Lockett residence where they discovered that Dew and James Lockett had also returned home. The police investigation culminated in the arrests of Parker, Dew, James Lockett and the appellant.

The above rendition of facts was presented to the trial court through the testimony of Al Parker. To corroborate this co-defendant's testimony, the state presented the testimony of Ethel W. Garrett, Ronda Reed, Joanne Baxter, Lowell Hayes, Billy Ray Berry and James Gasdaglis.

Mrs. Garrett testified that she was an employee of City-Wide Answering Service. Mrs. Garrett further testified that on January 15, 1975, at 12:51 p.m., she received an alarm from Syd's Market Loan.

Ronda Reed, an employee of the Marine Corps recruiting station near Syd's Market Loan, testified that she was in front of the pawn shop at the time of the robbery and observed inside, three black males and one white man. Further, Reed noticed a shiny object in the hand of one of the black men. After the three black males ran out of the shop, Reed observed one black subject stuffing a gun into his pants.

Joanne Baxter's testimony corroborated that given by Parker concerning the trip from New Jersey to Akron. Baxter further testified that the appellant, on the way to the Methadone Clinic on Tuesday, January 14, 1975, told Dew and Parker that she knew places that they could "knock off." Baxter testified that, on the return trip from the clinic, the appellant proceeded to show the others a market place as a possible robbery target. Baxter stated that the appellant, Dew, Parker and James Lockett met together on Wednesday morning, January 15, 1975, in one of the bedrooms in Baxter's apartment. Finally, she testified that she saw Parker Wednesday evening, at which

time he informed her of what had happened at Syd's Market Loan.

Lowell Hayes, a driver for the Yellow Cab Company, testified that on Wednesday, January 15, 1975, at approximately 1:30 p.m., he picked up a man and a woman at 168 Nieman Street, Akron, in cab No.52. Hayes identified the appellant as the woman in question. Hayes then testified that the appellant gave him directions to Tarbell Street which would have been a longer ride than the normal route. Further, Hayes testified that the normal route from Nieman to Tarbell would have put the cab closer to Syd's Market Loan than the route specified by appellant. Finally, Hayes testified that the appellant first sat in the middle of the back seat, but moved directly behind him when the cab was stopped by the police. Hayes then drove back to the cab company, checked his cab in and left work for the day at approximately 2:00 or 2:30 p.m.

Billy Ray Berry, at that time a driver for the Yellow Cab Company, testified that on Wednesday, January 15, 1975, at about 2:30 p.m., he recovered a gun from under the rear of the front seat (driver's side) from cab No. 52. James Gasdaglis testified that he took the gun away from Berry and turned it in to Mr. Edick, at the cab company's office, who, in turn, gave it to the police.

By stipulation, it was determined that Sidney Cohen died from a single gunshot wound. The gun causing the wound was stipulated to have been part of the inventory at Syd's Market Loan.

Appellant, in her defense, attempted to present the testimony of Nathan Earl Dew and James Lockett. Both Dew and Lockett immediately invoked their Fifth Amendment privilege, with their attorneys present.

II.

Appellant's propositions of law Nos. 1, 2 and 3 relate to alleged errors in the *voir dire* examination of prospective jurors.

Appellant argues that the trial court:

(1) Erred on *voir dire* examination by permitting inquiry into the scruples of individual jurors regarding the imposition of capital punishment;

(2) erred in allowing the prosecutor to inform prospective veniremen that a sentence of death is only a possibility in the instant case; and

(3) erred by conducting only insufficient and cursory inquiry in the *voir dire* examination and improperly conducting the *voir dire* so as to impair the attempt to select a fair and impartial jury.

Appellant argues that it was error to inquire into the personal convictions of jurors regarding the imposition of capital punishment. Appellant maintains that, under Ohio's new sentencing procedure in capital cases, the decision as to whether a defendant lives or dies is removed from the jury, and the jury's only function under this statutory scheme is to adjudicate guilt or innocence. Appellant maintains that death qualification in jury selection is disallowed because the jury is no longer concerned with imposing punishment.

This court recently held, in paragraph two of the syllabus in *State* v. *Bayless* (1976), 48 Ohio St. 2d 73:

"In a prosecution for aggravated murder with specifications, a potential juror may be disqualified on *voir dire* if the trial court is satisfied from the inquiry that the juror will not render an impartial finding according to law as to the defendant's guilt or innocence, both of the charge and of the specifications."

The court, in *Bayless*, pointed out the necessity of inquiring into prospective jurors' scruples and opinions concerning capital punishment. The record of the *voir dire*, in *Bayless*, as well as in the present case, illustrates that the attitudes held by many individuals concerning capital punishment, both opposed and in favor, would prevent them from fairly and impartially applying the law, as given in the court's instruction, to the facts as they are presented. An inquiry into the opinions, and attitudes of prospective veniremen is not only proper, but essential, in order to expose prejudices and bias that might prevent a fair and impartial adjudication of guilt or innocence.

An examination of the record of the *voir dire* in the present case discloses that at least four prospective jurors were excused for cause, each of whom stated that they could not take an oath or affirm that they would well and

truly try the case upon the evidence presented and follow the law as given to them in the court's instructions, knowing that a finding of guilty of the charge and one or more of the specifications might result in a death sentence. No prospective juror was discharged for cause solely becuse he voiced a general objection to the death penalty. In fact, in one instance, a prospective juror, who voiced general objections but stated that she could and would take the oath, was not excused for cause. The record reveals no violation of the rule established in *Witherspoon* v. *Illinois* (1968), 391 U.S. 510. Appellant's first argument is without merit.

Appellant's second argument is that the mention by the prosecution that the death penalty was only a possibility resulted in a jury uncommonly willing to convict.

That statement by the prosecution was a totally accurate statement at the time it was made, *i.e.*, prior to trial. A determination of guilt of the charge, and of at least one of the specifications, and a determination by the trial court as to the lack of mitigating circumstances is necessary before imposition of the death penalty is mandated. As to appellant's belief that the prosecution's comment resulted in a jury uncommonly willing to convict, we believe it is unrealistic to assume that prospective jurors would not be aware of the fact that a guilty verdict on the charge and the specifications, in effect, every determination required of the jury, would not result in the imposition of the death penalty. Appellant's argument is without merit.

Finally, an examination of the record of the *voir dire* does not reveal that the trial court erred in conducting an insufficient and cursory examination into the opinions and attitudes of prospective jurors on the issue of capital punishment. The court and the prosecution explained to each juror the necessity of taking an oath that they would well and truly try the case against the accused and follow the law as given to them by the court. The trial court excused only those prospective jurors who stated that they definitely could not take or follow this oath, knowing that the death penalty might be imposed upon a finding of guilt. No juror was excused for cause solely because he

expressed a general objection to capital punishment. These three propositions of law are rejected.

III.

Appellant maintains, in her proposition of law No. 4, that it was plain error and denial of due process for the trial court to impanel prospective veniremen who, it is alleged, repeatedly stated on *voir dire* that they could not divorce themselves from pre-trial publicity.

An examination of the record of the *voir dire* in this case reveals that those jurors who had read of the robbery-murder all stated that they could, and would, judge the defendant solely upon the law and evidence presented at the trial and upon no outside source of information. We find no error in the record to show that any member of the jury was disqualified to sit because of pre-trial publicity. This proposition of law is overruled.

IV.

Appellant maintains in her fifth and sixth propositions of law that the state failed to prove beyond a reasonable doubt that the principal offender, Al Parker, had a purposeful intent to kill and that the accomplices shared that purpose pursuant to R.C. 2903.01(B).

R.C. 2923.03 reads, in pertinent part:

"(A) No person, *acting with the kind of culpability required for the commission of an offense*, shall do any of the following:

"***

"(2) Aid or abet another in committing the offense." (Emphasis added.)

R.C. 2903.01(B), the aggravated murder statute under which appellant was charged as an aider and abettor, provides:

"No person shall purposely cause the death of another while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson or arson, aggravated robbery or robbery, aggravated burglary or burglary or escape."

R.C. 2901.22(A) defines the culpable mental state of purpose, as follows:

"A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature."

It is clear from this statute and the decisions construing the prior existing first degree murder statute that Ohio does not adhere to the strict felony-murder rule. It has long been recognized that intent or purpose to kill is an essential element of the crime of first degree murder in this state. *Robbins* v. *State* (1857), 8 Ohio St. 131; *State* v. *Farmer* (1951), 156 Ohio St. 214.

The appellant contends, in proposition of law No. 5, that the state failed to prove that the principal offender had a purposeful intent to kill. We disagree.

The record in this case establishes that the appellant, Sandra Lockett, and her companions, the triggerman, Al Parker, James Lockett and Nathan Dew, agreed upon a common plan to rob the victim, Sidney Cohen. The appellant pointed out the place to be robbed and waited in a car outside while the robbery took place because she was afraid she might be recognzied. Prior to the robbery, the participants had planned to use a gun which they would acquire in the victim's pawnshop. They were all aware that Parker had the bullets which they planned would be used to load the gun. The evidence clearly establishes a common plan to use a deadly weapon in the commission of the robbery of the victim.

The testimony of the triggerman, Parker, was that he took the bullets from his pocket and put them into a gun taken from the pawnshop display case. He testified further that, as he pointed the gun at the victim for the purpose of robbery, the victim grabbed for the gun and, in so doing, the gun was fired and he was killed. Parker admitted that his finger was on the trigger before the gun was fired. A substantial part of his testimony was confirmed by an employee of a nearby office who happened to be looking into the pawnshop at the time of killing took place.

It is well established in Ohio that "*** one may be presumed to intend results which are the natural, reasonable, and probable consequences of his voluntary act*** (*State* v. *Farmer*, *supra*, at page 223), and "*** [i]f the use of a weapon, likely to produce death or serious bodily harm, results in death, such use, in the absence of circumstances of explanation or mitigation, may justify a determination beyond a reasonable doubt that there was an intent to kill." (*Id.*, at page 222.)

The evidence introduced by the state in this cause established that the participants in the Cohen robbery-homicide entered into a common design to rob the decedent's store by the use of force, violence and a deadly weapon. All the participants were aware that an inherently dangerous instrumentality was to be employed to accomplish their felonious purpose. The murder of the proprietor was a natural and probable consequence of the execution of a common plan, which, in itself, was inherently dangerous to human life. The record contains sufficient evidence upon which a jury could find a purposeful intent to kill, and this court can not alter that finding in the absence of evidence tending to rebut or mitigate the existence of that intent.

The second part of appellant's argument states, alternatively, that, although the principal offender may have had a purpose to kill, the record contains no evidence that the appellant shared that purpose, as required by R.C. 2923.03(A)(2).

Our previous examination of the record established the common plan to commit robbery by the use of a deadly weapon. The appellant was an active participant at all stages of the conspiracy and was, in fact, the leader in selecting the decedent's place of business for robbery.

Appellant's only divergence in participation arises from the fact that she waited outside the pawnshop in a car to avoid recognition and was not present in the store at the time of the killing.

Ohio's complicity statute, R.C. 2923.03(A)(2), as previously discussed, requires that aiders and abettors share the culpable mental state required for the commission of the principal offense. Appellant contends that this requirement supersedes pre-existing case law. We disagree.

The Legislative Service Commission Committee Comments to the complicity section point out that this section codifies existing case law with respect to aiding and abetting.

In *State* v. *Doty* (1916), 94 Ohio St. 258, this court held:

"Where***[an] unlawful act was contemplated in the original conspiracy, although not identical with or similar to the criminal act charged, if the conspired unlawful act and the manner of its performance would be reasonably likely to produce death, each conspirator is equally guilty with the principal offender, as an aider and abettor in the homicide, although such aider and abettor was neither present nor had knowledge of the physical killing or of the weapon used."

This court, in *Doty*, at page 265, explained that "***where the conspiracy in its origin may have intended the commission of an unlawful act of violence, although not identical with or similar to the criminal act charged, still if that common purpose resulted in the killing, and if the manner of performance of the criminal act conspired could have been reasonably contemplated as likely to produce death, in that event the coconspirators are equally criminally guilty with the principal.***" See, also, *Goins* v. *State* (1889), 46 Ohio St. 457; *Stephens* v. *State* (1884), 42 Ohio St. 150.

Several recent appellate court decisions have followed this rule. The syllabus in *State* v. *Palfy* (1967), 11 Ohio App. 2d 142, states:

"1. A person engaged in a common design with others to rob by force and violence various individuals of their property is presumed to acquiesce in whatever may be reasonably necessary to accomplish the object of the enterprise; and if, under the circumstances, it might be reasonably expected that the victim's life would be endangered by the manner and means of performing the criminal act conspired, each one engaged in the common design is bound by the consequences naturally or probably arising in its furtherance and, in case of death, would be guilty of homicide.

"2. If the conspired robbery, and the manner of its accomplishment, would be reasonably likely to produce

death, each plotter is equally guilty with the principal killer, as an aider and abettor in the homicide, even though the aider and abettor was not aware of the particular weapon used to accomplish the killing. An intent to kill by the aider and abettor may be found to exist beyond a reasonable doubt under such circumstances."

In *State* v. *Trocadero* (1973), 36 Ohio App. 2d 1, the Court of Appeals for Franklin County stated, in paragraph two of the syllabus:

"Where it has been determined that a criminal conspiracy existed with regard to the commission of a crime, it need not be proved that an aider or abettor possessed those individual elements needed to establish the crime against the perpetrator."

The distinction between these cases holding an aider or abettor liable as a principal if he is constructively present at the commission of a crime and those cases which require proof of the aider's intent as separated from that of the principal, or proof that the aider knew the perpetrator had the intent to kill (*Woolweaver* v. *State* [1893], 50 Ohio St. 277; *Coffin* v. *United States* [1896], 162 U.S. 664), lies in the existence of a prior criminal conspiracy.

Clearly, the record indicates that Parker's intent was to use whatever means reasonably necessary to accomplish the robbery of Sidney Cohen by means of force, violence and the use of a deadly weapon. Under these circumstances a killing might be reasonably expected.

The record establishes that the appellant participated in the planning and commission of the robbery and acquiesced in the use of a deadly weapon to accomplish the robbery. Under these circumstances, it might be reasonably expected by all the participants that the victim's life would be endangered by the manner and means of performing the act conspired.

Therefore, the appellant, as well as the other participants, is bound by all the consequences naturally and probably arising from the furtherance of the conspiracy to commit the robbery. The record reflects that this was the case and establishes beyond a reasonable doubt that the appellant had a purposeful intent to kill.

V.

Appellant maintains, in her proposition of law No.7, that the trial court's instructions to the jury on the charge of involuntary manslaughter and the failure to instruct on the defense of accident, represented plain error substantially affecting the rights of the accused.

Crim R. 30 states, in part:

"A party may not assign as error the giving or the failure to give any instructions unless he objects thereto before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

The appellant, herein, failed to object to the court's charge on involuntary manslaughter and to the alleged failure to instruct on the defense of accident, and under Crim R. 30 those objections are waived.

The appellant urges, however, that under Crim. R. 52(B) the court's charge on involuntary manslaughter and alleged failure to instruct on the defense of accident constitute plain error affecting substantial rights of the defendant and may be noticed on appeal.

Our examination of the record reflects that the trial court's charge on involuntary manslaughter was adequate in that it instructed the jury that, if the killing were not done purposely but the other elements were found, then the defendant would be liable for a charge of involuntary manslaughter. The record further reflects that the court's charge on the element of purpose and the necessity of the state proving it beyond a reeasonable doubt also discusses and explains the absence of such purpose as constituting accidental killing. We do not find error on the face of the charge, and, in view of the appellant's waiver under Crim. R. 30, this proposition is not accepted.

VI.

Appellant's propositions of law Nos. 8 through 11 challenge the constitutionality of Ohio's statutory scheme for imposition of capital punishment.

This court's decision in *State* v. *Bayless*, *supra* (48 Ohio

St. 2d 73), held Ohio's statutory framework for the imposition of capital punishment constitutional and not violative of either the Eighth or Fourteenth Amendments to the United States Constitution, and those issues need not be reconsidered here. Propositions of law Nos. 8 through 11 are overruled.

VII.

Appellant's proposition of law No. 12 asserts that the appellant's Sixth Amendment right to choice of counsel was denied when the trial court refused to grant a continuance to allow retained counsel to prepare for trial.

The record in this cause reflects the fact that competent counsel were appointed by the state to defend the appellant. Appellant claims that, on the day prior to trial, a continuance was sought on the basis that additional counsel had been retained and that he desired additional time to prepare for trial. The record does not reveal whether or not other counsel had, in fact, been retained. Since appellant was represented by competent counsel at that time, it was within the sound discretion of the trial court to deny appellant's motion for a continuance. See *Thurston* v. *Maxwell* (1965), 3 Ohio St. 2d 92. This proposition of law is without merit.

VIII.

Appellant's proposition of law No. 13 asserts that the absence from the courtroom of the attorney in charge of the defense during critical stages of the trial violated the appellant's right to counsel under *Gideon* v. *Wainwright* (1963), 372 U.S. 335.

The record reveals that appellant was represented at every stage of the proceedings by competent counsel, and the alleged denial referred to consisted of a temporary absence of one of the two appointed counsel representing appellant. The record reveals that appellant's appointed counsel competently represented her. This proposition of law is unmeritorious.

IX.

Appellant's proposition of law No. 14 asserts that trial counsel were ineffective, and, as a result, appellant was deprived of her Sixth Amendment right to counsel.

Appellant maintains that trial counsel failed to make objections at certain stages of the *voir dire* and at trial. Clearly, the mere failure to make objections which seem appropriate after the fact does not establish reversible error.

Our examination of the record revealed that defense counsel performed conscientiously and, at least, as well as a lawyer with ordinary training and skill in the criminal law. Defense counsel investigated and asserted all the apparently substantial defenses that were available to the defendant in the face of the evidence presented against her. This proposition of law is unacceptable.

X.

Appellant's proposition of law No. 15 asserts that appellant was denied a fair trial and due process of law by reason of misconduct of the prosecutor during the course of the trial.

Our examination of the record fails to reveal any inflammatory statements or conduct prejudicial to the rights of appellant. The statements made by the prosecutor to the effect that the evidence against appellant was uncontradicted and unrefuted does not constitute a comment by the prosecutor upon the failure of the defendant to testify, prejudicial to appellant's right to a fair trial. This proposition of law is rejected.

XI.

Appellant, in her proposition of law No. 16, alleges that the sentencing stage in Ohio's statutory framework for the imp ition of capital punishment is unconstitutional for the reason that the mitigation hearing following conviction for aggravated murder with specifications requires the defendant to prove by a preponderance of the evidence why she should not be executed, thus shifting the burden of proof to the defense.

Appellant's argument miscontrues Ohio's statutory sentencing procedures. Appellant's argument would have the state prove the proper punishment. Clearly, the introduction of mitigating circumstances has traditionally been a defense function. What appellant fails to perceive is the fact that her guilt has already been proven by the time of the mitigation stage of the proceedings. The mitigating circumstances listed in R.C. 2929.04(B) relate to the lessening of punishment and are far broader than affirmative defenses which the defense must prove in order to excuse or otherwise justify the commission of an offense.

We find no constitutional conflict in imposing the burden of proving mitigation of punishment on a defendant already adjudged guilty of the commission of a capital offense. This proposition of law is without merit.

XII.

Appellant's propositon of law No. 17 asserts that the trial court should not have imposed the death penalty in this case, because the offense was primarily the product of a mental deficiency, under R.C. 2929.04(B)(3):

R.C. 2929.04 states, in pertinent part:

"***

"(B) Regardless of whether one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment and proved beyond a reasonable doubt, and death penalty for aggravated murder is precluded when, considering the nature and circumstances of the offense and the history, character, and condition of the offender, one or more of the following is established by a prepondence [preponderance] of the evidence.

"***

"(3) The offense was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity."

Appellant's counsel maintain that the record indicated that the appellant was on the borderline of mental retardation, under the influence of methadone and subject to undue influence by others. Appellant's counsel urge that these factors establish the fact that the appellant was mentally deficient to such a degree that the death penalty

should have been precluded.

The evidence before the court consisted of the mental evaluations of the appellant performed by Michael Hungerman, Ph.D. in psychology, Dr. Martin J. Gunter, psychiatrist, and Dr. Abdon E. Villalba, psychiatrist, which were entered into the record by agreed stipulations.

These evaluations were contradictory in relation to the estimation of appellant's I.Q. One evaluation rated the appellant to have an average to slightly above average intelligence; another rated appellant in the low average range of I.Q., while the third evaluation determined that the appellant's I.Q. was in the range of borderline mental retardation.

Although one of the experts testified that the appellant was subject to undue influence by other people, all the examiners concluded that the appellant was not suffering from a mental deficiency and that her participation in the aggravated murder and robbery of Sidney Cohen was not primarily the product of a psychosis or mental deficiency.

On the basis of the record we conclude that the appellant failed to meet the burden of proving by a preponderance of the evidence that mitigating circumstances existed such as to preclude the imposition of capital punishment. This proposition of law has no merit.

XIII.

For the reasons expressed in this opinion the judgment of the Court of Appeals is affirmed.

Judgment affirmed.

HERBERT, CELEBREZZE and P. BROWN, J.J., concur.
O'NEILL, C.J., STERN and W. BROWN, JJ., dissent.

STERN, J., dissenting. The prohibition in the Eighth Amendment against "cruel and unusual punishments" has been held to impose two limitations upon legislative imposition of penalties for criminal acts.

"First, the punishment must not involve the unnecessary and wanton infliction of pain***. Second, the punish-

ment must not be grossly out of proportion to the severity of the crime." (Citations omitted). *Gregg* v. *Georgia* (1976),___U.S.___49 L.Ed. 2d 859,875. In this case, the defendant has plainly been proved guilty of being an accomplice to armed robbery. I cannot agree, however, that she may constitutionally be put to death for committing that act, solely because of a presumption that she is thereby guilty of the aggravated murder committed by the principal in this crime. There was no evidence that the defendant or the other participants in the robbery had an actual purpose or intent to kill Sidney Cohen, and the triggerman, Al Parker, testified as the state's principal witness that the shooting was unintentional. Nevertheless, the jury was instructed that:

"A person engaged in a common design with others to rob by force and violence an individual or individuals of their property is presumed to acquiesce in whatever may reasonably be necessary to accomplish the object of their enterprise. And if under the circumstances it may be reasonably expected that the victim's life would be in danger by the manner and means of performing the criminal act inspired, each one engaged in the common design is bound by the consequences naturally or probably arising in its furtherance.

"If the conspired robbery and the manner of its accomplishment would be reasonably likely to produce death, each plotter is equally guilty with the principal offender as an aider and abettor in the homicide, even though the aider and abettor was not aware of the particular weapon used to accomplish the killing. An intent to kill by an aider and abettor may be found to exist beyond a reasonable doubt under such circumstances."

Under these instructions, the jury had, of logical necessity, to find the defendant guilty of aggravated murder if it found that Al Parker had a purpose to kill.

In virtually any scheme to commit aggravated robbery, "it may be reasonably expected that the victim's life would be in danger by the manner and means of performing the criminal act," for one of the elements of aggravated robbery is that the principal offender "[h]ave a deadly weapon or dangerous ordnance as defined in Section 2923.11 of the

Revised Code on or about his person or under his control;" or "[i]nflict, or attempt to inflict serious physical harm on another," R.C. 2911.01. The result of the judicial presumption stated in the jury's instructions and approved by the court is, in effect, that virtually any accomplice to aggravated robbery is automatically liable for aggravated murder with specifications and for the death penalty, regardless of whether he or she had any actual intent or purpose to kill, whenever one of the participants in the robbery purposely kills someone. By judicial presumption, the court is imputing the guilt of a murderer upon one who would otherwise be guilty only of aggravated robbery, and is affirming the imposition of the death sentence on the basis of that imputed guilt.

I recognize that past Ohio cases have reached this result. *Black* v. *State* (1921), 103 Ohio St. 434; *State* v. *Doty* (1916), 94 Ohio St. 258; *Woolweaver* v. *State* (1893), 50 Ohio St. 277; *Gains* v. *State* (1889), 46 Ohio St. 457. However, these cases were decided before the enactment of the new Ohio Criminal Code in H.B.511. The prior statute, R.C. 1.17, provided that "[a]ny person who aids, abets, or procures another to commit an offense may be prosecuted and punished as if he were the principal offender." This statute made no mention of the *mens rea* of an aider and abettor, and the court's judicial construction of Ohio law to requiure none therefore had a sound basis. The present statute, to the contrary, specifically adds language requiring proof of mental culpability. R.C. 2923.03(A) provides that:

"No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

"***

"(2) Aid or abet another in committing the offense." (Emphasis added.)

The additional statutory language has no effective meaning if the present law is held in fact to require no proof of culpability. The actual meaning of this change in the statute is shown by R.C. 2901.21, which provides that, except in cases of strict criminal liability, "a person is not guilty of an offense unless*** [h]e has to requisite degree of cul-

pability for each element as to which a culpable mental state is specified by the section defining the offense." The clear meaning of this section, as applied to a case of aggravated murder, is that a person is not guilty of aggravated murder unless he has the requisite culpability, which is that he acted purposely. Under R.C. 2901.22, "[a] person acts purposely when it is his specific intention to cause a certain result. ***"

The major prosecution argument opposing this construction of the statute is that the committee comment to R.C. 2923.03 states that "[i]n essence, this section codifies existing case law with respect to 'aiding and abetting.' " This general statement can not, however, control over the specific language of the statutes actually adopted, nor can it be taken to have weakened the statutory mandate that "Sections of the Revised Code defining offenses shall be strictly construed against the state, and liberally construed in favor of the accused." R.C. 2901.04(A). The most reasonable construction of these statutes is that an aider and abettor, who is prosecuted and punished as if he were a principal offender, must be proved to have the culpability required as an element of that offense, in the same manner as the principal offender. In cases such as this, involving the death penalty for aggravated murder with specifications, this construction of the statutes is not only correct, but it is also constitutionally mandated, for otherwise the imposition of the death penalty upon an aider and abettor would run afoul of the Eighth Amendment.

I certainly agree that aggravated robbery is a serious crime for which the stringent statutory penalty of up to 25 years imprisonment is fully justified, and I believe that an accomplice in a case such as this would be guilty of involuntary manslaughter under R.C. 2903.04. Further, if an accomplice actually shares the purpose and intent to kill, and that purpose is proved as an element of the offense beyond a reasonable doubt, the accomplice is equally guilty and should be held liable to receive the death penalty in the same manner as the actual killer. But I also believe that the death penalty may constitutionally be applied only for the most serious of crimes, very possibly

only for the act of murder itself, and that it is disproportionate to the offense when imposed for a lesser crime.

A conclusive judicial presumption that one person had the specific intent to commit murder, because his confederate had such intent, necessarily will result in some accomplices to aggravated robbery receiving the statutory punishment for aggravated robbery, while others, for the same acts, will be sentenced to death because of the acts and purposes of others. The imposition of the death penalty in the latter cases is both arbitrary and grossly disproportionate to the crime.

I would hold that a trial court in a capital case under the present statute may not constitutionally presume that an accomplice shares a principal offender's purpose to kill, and would hold that the fact must be proved beyond a reasonable doubt, under all the circumstances, in the case of an accomplice as well as in that of a principal. For that reason, I would reserve the verdict of guilt on the charge of aggravated murder, with specifications, and affirm the verdict of guilt of aggravated robbery.

O'NEILL, C.J., and W. BROWN, J., concur in the foregoing dissenting opinion.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

State of Ohio,
Appellee,

vs.

Sandra Lockett,
Appellant.

1976 TERM
To wit: December 30, 1976

No. 76-424
APPEAL FROM THE COURT OF APPEALS
for SUMMIT County

This cause, here on appeal from the Court of Appeals for SUMMIT *County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is affirmed* for the reasons set forth in the opinion rendered herein and it appearing to the Court that the date heretofore fixed for the execution of the judgment and sentence of the Court of Common Pleas is now past, this Court proceeding as required by law does hereby fix the 2nd day of March, 1977, as the date for carrying said sentence into execution by the Superintendent of the Southern Ohio Correctional Facility, or in his absence by the Assistant Superintendent, in accordance with the statutes in such case made and provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this Court be duly certified to the Superintendent of the Southern Ohio Correctional Facility and the Superintendent make due return thereof to the Clerk of the Court of Common Pleas of Summit County,

and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its *costs herein expended; that a mandate be sent to the* COMMON PLEAS COURT *to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for* SUMMIT *County for entry.*

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

1976 TERM
To wit: December 30, 1976

State of Ohio,
Appellee,

vs.

Sandra Lockett,
Appellant.

No. 76-424
MANDATE

To the Honorable COMMON PLEAS COURT
Within and for the County of SUMMIT, *Ohio, Greeting:*

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Judgment of the Court of Appeals affirmed for the reasons set forth in the opinion rendered herein.

It is further ordered that the execution date be set for Wednesday, March 2, 1977.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

1977 TERM

To wit: January 28, 1977

State of Ohio,
Appellee,

vs.

Sandra Lockett,
Appellant.

No. 76-424

REHEARING

It is ordered by the court that rehearing in this case is denied.

THE STATE OF OHIO,
City of Columbus.

1977 TERM

To wit: January 28, 1977

State of Ohio,
Appellee,

vs.

Sandra Lockett,
Appellant.

No. 76-424

ENTRY
(SUMMIT COUNTY)

Upon consideration of the motion, filed by counsel for appellant, to stay execution of sentence pending the timely filing of an appeal to the Supreme Court of the United States, it is therefore

ORDERED that execution of sentence be, and the same hereby is, stayed, pending the timely filing of an appeal to the Supreme Court of the United States.

It is further ORDERED that if a timely notice of appeal is filed to the Supreme Court of the United States, this stay will automatically continue pending final determination of the appeal by that Court.

It is further ORDERED that the Clerk of this Court shall forthwith send a certified copy of this Stay of Execution to the Superintendent of the Southern Ohio Correctional Facility, who shall acknowledge receipt thereof.

S/C. William O'Neil
CHIEF JUSTICE

Supreme Court of the United States

No. 76-6997

SANDRA LOCKETT,

Petitioner,

v.

OHIO

On petition for writ of certiorari to the Supreme Court of the State of O hio.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petion for writ of certiorari be, and the same is hereby, granted.

October 11, 1977